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PROFESSIONAL NOTES

Mr. Henry Morgan

Our readers will have heard with much regret of the death on November 3 of Mr. Henry Morgan, F.S.A.A., a Past President of the Society of Incorporated Accountants and of the Association of British Chambers of Commerce, and a Past Chairman of the Council of the London Chamber of Commerce. An appreciation appears on page 52. At its meeting on November 23, the Council of the Society paid a tribute to Mr. Morgan, and adopted the following resolution:

The members of the Council express their great sorrow at the death of their distinguished colleague, Mr. Henry Morgan, who had been a member of the Council since 1920 and had served the office of President from 1929 to 1932. They tender to Mrs. Morgan and to the members of Mr. Morgan's family their heartfelt sympathy in their grievous loss, with an expression of their grateful remembrance of his wise counsel, judgment, and helpfulness and of his whole-hearted devotion to the interests of his fellow members in the Society of Incorporated Accountants.

Looking to the Future

Incorporated Accountants now with H.M. Forces have necessarily been out of touch for a long time with their fellow members in the profession and with current professional practice. Following the President's speech at the annual meeting in May, 1944, the Council of the Society has considered this problem, and the means by which, upon demobilisation of members, it can best be met. At a recent meeting, the Council decided that, after the formal termination of hostilities with Germany, a short course be held to last about one week or ten days; it is intended that the course shall be repeated as necessary. It will be on similar lines to those held before the war at Oxford and at Cambridge. The main purpose is that the Society shall welcome on their return to the profession those who have been away on the country's service, and to re-establish personal and friendly relationships between the members themselves and with the President and Council of the Society. Facilities will be provided for instruction and discussion. The course will be residential, and those who participate will be the guests of the Society. We hope to publish further details in a later issue.

Profits on Government Contracts

Though E.P.T. provides in most cases a safeguard against excessive retained profits, the various Supply Departments aim at so fixing their contract prices as to prevent excessive gross earnings. The latest report of the Committee of Public Accounts indicates that in this latter aim they have not been altogether successful. In negotiating fixed prices for contracts,

the Committee regard a profit of 7½ per cent. on capital employed as a standard starting point, and additions are made to this for efficiency and for risk, expressed as percentages of the estimated cost of production. Investigations made by the Ministry of Aircraft Production, covering all the principal firms engaged almost exclusively on direct contracts, show that for these firms the estimated profit percentage on cost was 4.41 in 1941, 3.76 in 1942, and 3.4 in 1943. The actual percentage profits earned, however, were 6.38 in 1941 and 5.60 in 1942, no figure being available for 1943. In relation to capital employed, these profits represented percentages of 18.51 in 1941 and 20.40 in 1942, no figure being available for 1943, whereas the Ministry, with Treasury approval, aims at rates between 10 and 15 per cent. The Ministry explained, however, that where the ratio of turnover to capital is high, this involves a very low rate of profit on cost, and it was argued that contractors would not accept contracts if the profit rate on cost were too low. Investigations specially undertaken where there were indications of unduly high profits show that a group of over 200 firms earned profits of £20,400,000 in respect of sales totalling £104,000,000 but refunds amounting to £7,600,000 are being recovered. In the case of sub-contractors to the Ministry of Supply, 73 per cent. showed profits of more than 15 per cent. on capital employed, and the Ministry have been able to negotiate refunds amounting to £10,750,000.

Ministry of National Insurance

Parliament has taken the first step towards implementing the policy set out in the White Papers on Social Insurance by enacting the Ministry of National Insurance Act, 1944. Sir William Jowitt, K.C., M.P., the first Minister of National Insurance, has the assistance of Sir Thomas Phillips, K.C.B., K.B.E., as Permanent Secretary, and of Sir Thomas Sheepshanks, K.B.E., C.B., as Deputy Secretary. Sir Thomas Phillips was formerly Permanent Secretary of the Ministry of Labour and National Service; he is succeeded in this post by Sir Godfrey Ince, K.B.E., C.B. The new Ministry is to be responsible for the existing schemes of health, pensions, and unemployment insurance, and for the work of the Assistance Board, as well as for the initiation and ultimate administration of the full scheme of social insurance. On page 45 of this issue will be found the first of a series of articles on the Government's plans.

Two Important Publications

Until recently, publications officially sponsored by the professional accountancy bodies were exceedingly rare. The recent series of pronouncements by the Council of the Institute of Chartered Accountants on "Accounting Principles"—many of which have been reproduced in our columns—has attracted much attention, and we are interested to note that the complete series has now been published by Gee and Co. (Publishers), Ltd., at the price of 1s. 6d. net. The publication is in the form of a loose-leaf volume of pocket size, and future "Principles" will be issued in uniform style so that they may be inserted in the volume. "Design of Accounts," by F. Sewell Bray, F.C.A., F.S.A.A., and H. Basil Sheasby, A.C.A., A.S.A.A., is now unfortunately out of print. This book was published six months ago for the Incorporated Accountants' Research Committee by the Oxford University Press, price 12s. 6d. net. All copies of the first edition have now been sold, and a large number of orders have been placed with booksellers in anticipation of a second edition, which will be produced as soon as difficulties arising from the paper shortage can be overcome.

The Beginnings of Reconversion

During the past few months the United States has already been making the first tentative moves towards the reconversion of industry to peace-time production, and a number of "spot authorisations" have been granted that will permit the resumption of civil production at a rate of over £50 million during the final quarter of this year. In this country, the task of reconversion still lies before us in its entirety, and how vast an undertaking this will be may be gathered from the fact that 80 per cent. of all employment in the manufacturing industries is now on Government account, while no more than one-third of our total labour force is engaged in production for civilian purposes, and a mere 2 per cent. in the manufacture of exports. Fortunately, there have been signs in the past few weeks that our authorities are now actively planning the change back to peace-time production. One factor seriously handicapping any restoration of export trade (now at less than 29 per cent. of its 1938 level) has, of course, been the restrictions imposed on the re-export of Lend-Lease materials. It is understood that Lord Keynes' mission to the United States has brought a solution of the chief difficulties under this head. Meanwhile, it is reported that Lend-Lease is to be continued at a rate of $5,000 million during the interval between the defeat of Germany and that of Japan, with the intention that this will permit the return of British industry to peace-time production "in step with United States industry."

During November, too, the Prime Minister announced that a substantial increase in civilian output will become possible as soon as the German war ends, priority to be given (as had been taken for granted) to export trade, the re-equipment of industry, and housing. All this, however, is still in the realm of the future. Hitherto, any concern using labour and materials even for the production of prototypes would have risked having their labour taken away from them, but the diversion of resources to this type of post-war planning was sanctioned in a circular letter sent out by the Board of Trade some weeks ago, provided always that there is no interference with war production. Only two instances

have been given in which return to civilian production has actually been permitted. It has been announced that the production of carpets is being expanded, while some time ago some hosiery factories in Lanarkshire were permitted to re-open. The object was to provide employment for a few hundred non-mobile women released by the termination of war contracts, who could not be directed to jobs away from their homes, and for whom it would not be worth while, at this stage of the war, to build new factories to produce the types of war products required for the Japanese campaign.

Beveridge on Unemployment

In large sections of the popular press, Sir William Beveridge's new study of "Full Employment in a Free Economy" has been hailed as a promise that (under the right auspices) this country need never again have unemployment exceeding 3 per cent., and that income tax can be reduced to 5s. 10d. in the pound by 1948. These are the most striking statements in the book, and Sir William does much to encourage expectations of their fulfilment by arguing that a figure of 3 per cent. unemployment is actually a conservative estimate of the possibilities. Yet it is difficult to reconcile this assertion with many other passages in the book itself, which at times shows a quite realistic appraisal of the difficulties involved. In particular, Sir William is not unaware of the obstacles to high employment arising out of the restrictive practices dear to employers and labour alike. There is a clear warning that "if, with peace, industrial demarcations, with all the restrictive tendencies and customs of the past, return in full force, a policy of outlay for full employment, however vigorously it is pursued by the State, will fail to cure unemployment." The treatment of unemployment arising out of changes in the demand for our exports (the source of the greater part of unemployment in the inter-war period and a factor almost wholly outside our control) is another example of the way in which the author looks so many difficulties in the eye and then passes on.

Technically, the Beveridge proposals differ in two major respects from those of the Government's White Paper. Whereas the Government proposed to counteract localised and structural unemployment by seeking to promote the mobility of labour between occupations, Sir William would attempt to stabilise employment in each main activity, relying on direction of juveniles to bring about the necessary contraction and expansion of individual industries. Whether this would be anything like adequate in the event of a major change in demand or technique is obviously more than doubtful. Secondly, whereas the Government were prepared to vary public spending to offset fluctuations in private investment, Sir William would seek to stabilise investment compulsorily by means of a National Investment Board, whose functions are, however, left rather vaguely defined. Apparently it is taken for granted that the investment lopped off during a potential boom would still be forthcoming whenever it was convenient to the State to make way for it. This assumption is the more surprising as private enterprise in the Beveridge world would avowedly be permanently on trial and subject to the continuing threat of nationalisation. Indeed, the book is primarily a political rather than an economic document. Fortunately, this does not seriously affect the statistical estimates of Mr. Kaldor, which are of value for their own sake. Briefly, Mr. Kaldor reckons with a rise of 20 per cent. in real output and (allowing for a 33 per cent. rise in prices) of 60 per cent. in money incomes (to £8,500 million) between 1938 and 1948. This may sound optimistic, having regard to the actual decline of output in coalmining and the backwardness of many other major industries. But the assumed increase in productivity is securely based on past experience, and it is certain that unless a rise of this order can be achieved both our unemployment problem and the problem of providing a reasonable standard of living for our people in the early post-war years will be very burdensome indeed.

Goodwill

The article in our October issue contributed by members of the Incorporated Accountants' Research Committee, on "The Measurement of Profit in Relation to Fixed Assets," has provoked some criticism from a member of the Society. While welcoming the article as a whole, he disagrees with the suggestion that, owing to the impossibility of valuation, expenditure for rights, such as goodwill, should be eliminated from the balance sheet as early as possible. Goodwill, he points out, may be said to be the "spirit" of a business, linking producer with consumer. "The brains and vision of the management, the pioneer work of the sales staff, and the care and skill of the workpeople, have all contributed in erecting an asset of vital importance, which should be given a recognised place in the balance sheet." Goodwill must, however, be kept separate from tangible asset valuations, and he therefore suggests a "note" as follows:

	£	s.	d.
Market Price of shares at date of balance sheet	00	0	0
Balance sheet value of shares	00	0	0
Excess of market price over balance sheet value	00	0	0

(Being an indication of the value of potential future profitability arising from the value of the goodwill established by the company in this and previous years).

In reply to this, it is observed on behalf of the Research Committee that goodwill figuring in balance sheets is usually at cost or some lower figure, which is no indication of present value—a value which no accountant would desire to certify. The suggestion that the excess of market value over balance sheet value of shares is an indication of the value of future profitability is an obvious fallacy, readily refuted by reference to the many outside factors influencing market values.

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TAX CONCESSIONS

As mentioned in our last issue, the Chancellor of the Exchequer has now presented to Parliament "A List of Extra-Statutory War-time Concessions given in the Administration of Inland Revenue Duties." This has been published by H.M. Stationery Office as Cmd. 6559, at the price of 4d.

As its title implies, the pamphlet deals only with concessions that have arisen as the result of war-time legislation or conditions, and does not include the many general concessions that exist quite apart from current conditions. In reply to a question in the House asking whether he would publish these other concessions, the Chancellor was non-committal. We regret that a full list has not been published, and hope that the omission will be remedied at an early date. While Inspectors of Taxes as a whole are very good at pointing out concessions, it is quite inequitable that some taxpayers should be unaware of privileges available to them just because an overworked official does not see the possibilities of a concession in particular cases. Moreover, there are occasions where it is not until the figures are examined from more than one angle that the full possibilities are seen; it is too much to expect this to be done by the Revenue for the taxpayer.

Taxation must be fair and equal as between taxpayers, and publication of concessions is hardly less important than publication of the Acts themselves.

Under present circumstances, it is likely that many of our readers may not be able to obtain a copy of the pamphlet, and we are therefore publishing the text in ACCOUNTANCY in two instalments. The section on Excess Profits Tax appears on page 56 of this issue; the remaining sections, dealing with Income Tax, National Defence Contribution, Death Duties and Stamp Duties, will be published next month. As a result, we need not summarise the concessions in this editorial.

We would warn our readers to read each concession carefully, particularly in view of the mistaken reports that have appeared, especially in respect of gifts of Savings Certificates or Savings stamps to employees as Christmas presents. These can only be exempted where given in lieu of presents normally given in kind.

Most of the concessions have been brought to the attention of our readers from time to time, though there are one or two which have not hitherto been published. The concessions are of general application, though naturally subject to the facts of each particular case. It is apparent that many borderline cases will arise and the concessions have to be modified accordingly. We hope that the publication of the concessions will not harden the hearts of the authorities against extensions to meet difficult cases.

None of the concessions will meet with more general approval than those extended to members of H.M. Forces, and to taxpayers joining the Forces, Mercantile Marine, C.D. Services, etc. In the case of E.P.T., the major part of the concessions is devoted to working proprietors, directors' remuneration, and similar problems. We have already been asked whether some of these extend beyond the statement in the list. For example, it has been asked whether, on an amalgamation of private companies, where the shareholders in the new concern are identical with the old, deficiencies may be set-off in the same way as on a change in a partnership under Concession 24 (ii). While it is possible that the Revenue may allow this, we will only say that it is not in the List.

It is evident that some readers will be disappointed to find that a concession applicable to a particular case on which they are engaged, is not in the list. That does not necessarily mean that no concession is available; concessions are made to meet cases, not usually in advance of the circumstances being raised. Accordingly, the list is not necessarily finite; with taxation at its present levels, and in its complicated state, it is likely that positions will still arise where the Revenue will deem it desirable to meet the special facts by a new concession.

Having said that, we deem it essential to point out that hardship alone is not a good ground for requesting a concession. It would appear to be necessary to show that the intention and spirit of the legislation would be defeated by its strict application, or that the Acts do not provide for the special circumstances. Like so many other things in life, experience alone will indicate whether the case is one on which a concession can be sought with reasonable chance of success.

Finally, we must add that the pamphlet has been compiled with the care to which we are accustomed in a Revenue publication, and we welcome this first step towards drawing aside the curtain of secrecy that has hitherto hung over a very valuable aspect of the administration of the taxation Acts. We hope that many more such steps will be taken. Apart from the full list of concessions to which we have referred, we would welcome at least some of the departmental instructions being published. These are now so voluminous that it is difficult for Inspectors to keep pace with them.

Social Insurance

The Government's Proposals—I

By HENRY LESSER, O.B.E., LL.B., F.C.I.I., Barrister-at-Law

The Beveridge Report on Social Insurance and Allied Services was reviewed in ACCOUNTANCY in March, April and May, 1943. Since then the Government, after due consideration of the Report, have published four White Papers setting out their views, namely:

(1) Cmd. 6502—A National Health Service.
(2) Cmd. 6527—Employment Policy.
(3) Cmd. 6550—Social Insurance.
(4) Cmd. 6551—Workmen's Compensation.

The first two Papers deal with Assumptions "B" and "C" on which Sir William Beveridge had based his plan for social security. In 3 and 4 the Government set out their specific proposals for the reform of the social insurance services proper, and for the provision of children's allowances (Assumption "A" of the Beveridge Report).

These four Command Papers must be read together in order to appreciate the scope and character of the social and economic policy to which the Government are committed in the period following the cessation of hostilities with Germany. In two short articles it is possible only to deal with the essential features of the social insurance proposals, and to consider in what respects they differ from the recommendations of the Beveridge Report. It may be said, however, that the Government accept as one of their primary aims and responsibilities the maintenance of a high and stable level of employment after the war, and the White Paper on Employment Policy outlines the course it is proposed to follow in pursuance of that aim.

In regard to the National Health Service, the Government's plan is to ensure that in future every man, woman ,and child can rely on getting all the advice and treatment and care which they may require in matters of personal health.

The Government say that the new services will be "free to all," but this only means that the individual members of the public "will be paying for medical care in a new way, not by private fee, but partly by insurance contributions . . . and partly by the ordinary processes of central and local taxation." In other words, there will be no direct payment at the time the service is rendered.

In this connection it might incidentally be observed that the inclusion in the social insurance contribution of an amount of 10d. a week towards the cost of the health service makes it extremely doubtful whether or not there will be any room in the future for the many hospital contributory schemes throughout the country, whereby some ten million contributors at present make regular voluntary contributions to provide for payments to hospitals whilst in receipt of treatment.

The White Papers on Social Insurance and Industrial Injury Insurance have been debated in Parliament and, apart from criticism in matters of detail, have received general approval. Briefly, the Government propose that there shall be a compulsory scheme of insurance which shall include everybody. Administration would be unified under the control of a Minister of Social Insurance.* The population would be divided into six classes (as recommended by Sir William Beveridge), i.e., Class I, Employees; Class II, The Self-Employed; Class III, Housewives; Class IV, Adults who do not earn; Class V, Children; Class VI, Retired Persons.

Persons below working age will be provided for by family allowances paid for by the Exchequer out of taxation; those of working age by insurance benefits; and those beyond working age by retirement pensions. The scheme will cover large groups of persons not hitherto State insured, *e.g.*, those living on private incomes, professional people, and shopkeepers, and non-manual workers earning more than £420 a year. The contributing classes (I, II and IV) will pay a single weekly contribution for all benefits in the form of one stamp on one card.

The benefits provided cover unemployment, sickness, invalidity, industrial injury, retirement, maternity, widowhood, and death.

It will be seen that in range and comprehensiveness the Government's proposals do not differ from the plan put forward by Sir William Beveridge.

The Standard of Benefit

In fixing the rates of benefit, however, an important difference of principle arises. Sir William Beveridge took the view that "Social insurance should aim at guaranteeing the minimum income needed for subsistence," and, accordingly, suggested a provisional rate of benefit based on a cost of living about 25 per cent. above that for 1938. The rate of benefit (24s. for a single person and 40s. for a married couple) was to be the same for unemployment, disability, guardianship, and (ultimately) retirement.

The Government do not accept the "subsistence" principle. Their scheme is based upon a contribution which all should be able to pay. In return for that contribution benefits are to be received which will at least "take the edge off the mishaps of life." As the Minister-Designate of Social Insurance pointed out, "it is not and does not pretend to be a scheme of social *security*." It is an insurance scheme, and there will still remain the individual's opportunity to achieve for himself by voluntary insurance a standard of comfort and amenity which it is no part of a compulsory scheme of social insurance to provide. Moreover, subsistence needs are not identical—they vary from person to person, from place to place, and from time to time. The mere variation of rents in different parts of the country would make it impossible to provide a universal flat rate of "subsistence" benefit.

*The title has since been altered to "Minister of National Insurance."

The Government, therefore, propose that as a second line of defence there shall be a scheme of National Assistance financed by taxation to fill the inevitable gaps left by insurance and to supplement the insurance benefit where individual needs so require. National assistance would, of course, be payable subject to a needs test.

Again, a distinction is drawn between temporary benefits and those of a permanent character. Sickness, unemployment and guardian's benefit, which are all limited in duration, are to be at a higher rate than invalidity benefit and retirement pension, as the following table shows:

	Sickness, Unemployment and Guardian's Benefits	Invalidity Benefit and Retirement Pension
	s. d.	s. d.
Single Pension ...	24 0	20 0
Married Couple ...	40 0	35 0

It is not clear what logical reason there is for this difference—the point certainly does not seem to have been brought out in the debate in the House of Commons. The view may have been taken that where a condition is permanent, as in the case of invalidity or retirement, the beneficiary will adjust himself to a change in his way of life to an extent that is not so easily possible in the case of temporary sickness or unemployment. Or the financial factor may have been predominant, since the cost of providing for permanent benefits is extremely heavy, and any further increase in contribution would have been undesirable. Curiously enough, however, in the case of industrial injury, a higher rate of benefit is proposed where the condition is permanent. No adequate explanation has been given for this divergence in policy.

In favour of the pensioner, it may be pointed out that whereas Sir William Beveridge recommended that the pension should commence at a fairly low rate, rising to the full amount of 24s. (40s. for a married couple) in twenty years' time, the Government propose to introduce the new rate of pension at the commencement of the scheme. On the whole, it would seem that the Government's plan is the more attractive; changes can be made to meet new social and economic conditions as they arise.

Sickness and Unemployment Benefit

At present the qualifying conditions for the receipt of sickness and unemployment benefit are not identical, but the Government propose, as did the Beveridge Report, to bring them into line. There is, however, this important difference. Whereas Sir William would have made both benefits unlimited in duration, relying upon the " sanctions " of training schemes and rehabilitation courses to prevent abuse, the Government prefer to limit the period of benefit without imposing these restrictive conditions. It is, accordingly, provided that sickness benefit shall be paid for a maximum period of three years, while unemployment benefit shall be limited to thirty weeks. When these insurance benefits are exhausted, the sick man would receive an invalidity benefit indefinitely, while the unemployed person would have recourse to national assistance. The contribution conditions for both benefits are: (*a*) 26 contributions *actually* paid; and (*b*) 50 contributions paid (*or excused* on account of unemployment or sickness) *during the past contribution year*. If less than 156 contributions have been actually paid, sickness benefit will be limited to one year instead of three, and the contributor will not be entitled to invalidity benefit.

Periods of sickness or unemployment which are separated by less than three months will be treated as continuous. When benefit has been exhausted a contributor can acquire a new qualification by the payment of ten contributions.

In regard to self-employed persons, there is a special limitation. Sir William Beveridge recommended that sickness benefit should only be payable to such persons after the first thirteen weeks of illness. The Government propose, however, that the waiting period should be four weeks. To many critics this seems hardly fair since it would mean that benefit would only be payable in the case of serious illness, as experience has shown that the vast majority of sickness claims do not cover a period of more than four weeks. The Government will doubtless be pressed to reconsider their decision when draft legislation is before Parliament.

Widows' Benefit

Like Sir William Beveridge, the Government take the view that there is no case for the community taxing itself in order to provide a pension for a woman on the sole ground that her husband has died. There is need, however, to make provision for the elderly widow, and the widow with dependent children. It is, accordingly, proposed:

(1) that all women widowed before age 60 should receive a Widow's *Benefit* of 36s. a week for 13 weeks from the date of the husband's death;

(2) at the end of that period—

  (*a*) Guardian's benefit of 24s. a week should be paid (together with children's allowances) while there are dependant children;

  (*b*) Sickness benefit, unemployment benefit or training allowances as may be appropriate would be available *if there are no children*.

(3) *Widow's Pension* of 20s. a week would be payable to a woman aged 50 or over on the death of her husband, or when the widow ceases to be entitled to guardian's benefit, provided she has been married for at least ten years.

In one important respect these proposals are an improvement on the Beveridge recommendations, under which the widow's pension would not have been paid unless the widow had attained the age of sixty. The qualification for widow's benefit is to be the actual payment of 156 contributions, and a yearly average of fifty contributions paid or excused over the whole period of insurance. The rate of guardian's benefit and widow's pension will be reduced where the widow earns more than 20s. a week. Special provision is made for transitional cases. There is not space to set out the details here, but, put shortly, all accrued or accruing rights of widows under the existing pensions scheme will be preserved.

(To be continued.)

Estate Duty and the Finance Act, 1940

By F. S. BRAY, Chartered and Incorporated Accountant

For some time now solicitors and professional accountants have been perplexed by what appear to be ambiguities and anomalies in the estate duty provisions of the Finance Act, 1940, in particular Sections 46-59, and Schedule 7. The effect of some of these provisions has always seemed obscure and when interpreted strictly to involve some hardship.

As most accountants are now aware, Part VI of the Finance Act, 1944, has brought provisions designed to meet some of these difficulties; but it does not seem that all the points were covered.

Discussions on the 1944 Finance Bill

It is understood, however, that when the Finance Bill for 1944 became available, its provisions were considered by representatives of the Law Society and of the Institute of Chartered Accountants, who prepared a memorandum dealing with the provisions of the 1940 Act as related to the amendments then proposed in the 1944 Finance Bill. This was sent to the Chancellor of the Exchequer, and was discussed at a meeting with members of the Inland Revenue.

A number of interesting points appear to have emerged from this discussion. It may not be out of place to reconsider some of these points here.

Companies' Assets Deemed to Pass on Death

It now seems the Inland Revenue hold the opinion that upon a true construction of Section 46 (1) of the Finance Act, 1940, " assets of a company could not be deemed to pass on the death to a greater extent than 100 per cent. of the value of those assets at the date of death." Presumably, this may be taken to meet the point raised in the case of a company which, having raised money on debentures, pays them off within three years of the death of a person who has transferred assets to and received benefits from the company, with the result that the moneys used in the redemption are deemed to be assets of the company, so that death duties may be payable on a proportion of them. (It was suggested in the original letter to the Chancellor of the Exchequer that this might happen even though the debenture holder were a person wholly unconnected with the testator.)

Presumably, also, this opinion of the Inland Revenue does something to meet the objection that the definition of the word " transfer " in Section 46 is too wide, as it might be held to cover " either the making of a loan on the security of a debenture or a subscription in cash for shares in the normal course of business by a person other than an original vendor."

It is understood that the Inland Revenue will give further consideration " to the position of a company —particularly a public company—in respect of whose assets a contingent liability to estate duty would arise on the deaths of persons now living who had made transfers of assets to the company." At this stage it is interesting to note that the representatives of the Institute of Chartered Accountants made the point that an accountant, when reporting on the accounts of such a company, might find himself in some doubt on the question whether he should qualify his report in view of the contingent liability to estate duty.

It also seems that the Inland Revenue will reconsider and study the position where " owing to a reduction in its income, during the three years before the death of a debenture holder or holder of preference shares who had made a transfer of assets to the company, a company paid debenture interest out of reserves with the effect that an unduly high proportion of the company's assets would be attributable to the interest in the company of the deceased transferor," resulting in a liability to estate duty.

Two other matters seem to have been made clear as a result of the discussion to which we have referred. It is apparently now agreed that no claim to estate duty arises under Section 46 of the Finance Act, 1940, " where a company sustained an aggregate loss during the relevant period, *even though benefits were received by the transferrer during that period.*" (Italics ours.)

The second point to be mentioned here is that the Inland Revenue have apparently stated " that the provisions of Section 51 (4) of the Finance Act, 1940, which deal with questions concerning the reasonableness of remuneration," are treated as applying to pensions.

Reasonable Interpretation

Finally, it seems that for their part the Inland Revenue have expressed an intention of applying the statutory provisions in a reasonable manner, from which it is clear they hope it will be found unnecessary to pursue further questions of detail resulting in proposals for further legislation. It has been pleasing to see the useful results which have come from this discussion.

A Further Anomaly

In concluding these observations, it is perhaps not out of place to refer to the anomaly to which Mr. D. F. Goode drew attention in his article on *Income Tax and Estate Duty on Dividends*, published in the issue of ACCOUNTANCY for November, 1943. Apparently on the assumption of the application of the highest rates of sur-tax and estate duty, it is possible for a dividend received shortly after the death of a testator to attract a total taxation of 26s. in the £. The facts and circumstances are clearly set out in Mr. Goode's article, from which it will be seen that this anomaly appears to arise by reason of the provisions of Part III of the Finance Act, 1938, in particular Sections 30-37, which govern the ascertainment of statutory income in the case of both absolute and limited interests for income-tax and sur-tax purposes. It may be that here is yet another case of hardship which the Inland Revenue might be asked to consider.

TAXATION

Taxation Notes

Rate of Tax Deductible from Annual Payments in Arrear

General Rule 21 provides that where an annual payment is not paid out of profits brought into charge to tax, the payer must deduct tax at the standard rate in force at the time of payment, and account for such tax on a special assessment. General Rule 19, on the other hand, which applies to payments out of profits brought into charge to tax, requires the profits to be assessed without any deduction for the annual payment, but entitles the payer to recoup himself by deducting tax from the payment. Rule 19 was amended by Section 39 (1), Finance Act, 1927, which provides that tax is deductible at the standard rate for the year in which the amount payable becomes due.

Many cases have been before the Courts, but it was not until this year that a decision was given as to the position under the amended rule where interest is paid in a year later than that in which it becomes payable in the ordinary sense of the word. In *re Sebright* ((1944) T.R. 243), Vaisey, J., ruled that " the person entitled to the annual payment should, in regard to deduction of tax, be placed in the same position as though the payment had been made on the very day on which it became due. The person liable to make the payment may be in the position of having himself suffered a deduction at one rate while his own right of deduction and retention is at a different rate, that is to say, the rate which ruled at the time when the belated payment ought to have been made. It seems to me that the alteration of the Rule by the Act of 1927 merely substituted a fixed rate for a rate arrived at by day-to-day calculation." The words " becomes due " are not, therefore, to be read as meaning " becomes payable."

Farm Stock Insurance Against War Damage

Referring to our previous comments on this subject, we now draw our readers' attention to the Chancellor of the Exchequer's reply to the question whether he would introduce legislation to provide for the allowance of such insurance premiums as expenditure :

" The normal taxation rule in regard to insurance of trading stocks, which applies to the general scheme for insurance of trading commodities under the War Risks Insurance Act, 1939, is that the premium is allowable as a deduction and any policy moneys received are treated as a trading receipt. Farming stocks are, however, not dealt with under the general scheme, but are specially covered by policies issued under Part II of the War Damage Act, 1943. While the policy moneys are liable under the general rule, Section 113 of that Act expressly provides that the premium payable is not to be a deduction for taxation purposes. It was with full knowledge that the premium would not be allowed as a deduction that it was decided to insure farming stocks under Part II of the War Damage Act, and thereby secure for the farmer, in addition to other advantages, the benefit of a lower premium than is paid by the ordinary trader. I see no reason to alter the existing position, under which farmers in general gain as compared with the ordinary trader."

Valuation of Stock

Referring to our article in the November issue, we now have it on the highest authority that it is not the Revenue's policy to interfere with the established practice of valuation, and they only insist on the lower of total cost or total market value where there is an agreement to that effect in the particular class of business, *e.g.*, stockjobbers. If readers with outstanding cases care to submit the details (with names, reference numbers and type of business), we may be able to have their difficulties cleared.

Dividends out of Interest on Tax Reserve Certificates

Some discussion has taken place on the question of whether the interest on a Tax Reserve Certificate can be used to pay a dividend which will not be income of the shareholders. The opinion has been expressed that the interest, having been applied towards payment of tax, has already been paid away and cannot, therefore, be used as a dividend. It seems that this opinion is based on unsound grounds.

The taxpayer is given the right to acquire Tax Reserve Certificates, and if he surrenders them in payment of tax, interest is allowed. The amount of the certificate and interest is then accepted in payment of tax. It cannot be admitted that this takes the interest into any special category ; it is still a receipt of the business, and would be liable to tax were it not for the special exemption given by Sections 29 and 38, Finance Act, 1942. The taxpayer who uplifts a deposit account and uses the money, including interest, in discharge of tax, cannot contend that the interest has been placed in a special category, and the position seems to us the same.

Those who hold the opinion stated apparently view the interest on the Certificates as a discount on payment of tax (which it does, in fact, replace), but, with due respect, we do not see that even that viewpoint affects the situation. Our view is that the interest is income, though specially exempted from tax, and the very fact that exemption had to be given seems adequate proof that we are right. It is trite law that profits are none the less profits by reason of their ultimate destination ; income raised for a specific purpose is none the less income, and the compulsory application of income to a specific purpose does not prevent it from being income. (See, for example, *Tennant* v. *Smith* (1892), 3 T.C., at p. 165.)

In our view, a company can therefore pay a dividend out of such interest without deducting tax, as there is no " tax appropriate thereto " within the meaning of General Rule 20. The recipient cannot be assessed for two reasons : (1) it is out of a fund not liable to tax, and (2) there is no machinery for assessing it ; dividends can only be taxed by deduction under Rule 20. We agree (2) cannot apply to sur-tax, but (1) is enough to free the amount from taxation.

With a shareholder liable to sur-tax at the highest rate, the point is of some importance ; interest at 1 per cent. exempt from tax giving the same return as one of 40 per cent. subject to tax at 19s. 6d.

Obiter Dicta

In order to be capital expenditure, the advantage paid for need not be of a positive character, and may consist in the getting rid of an item of fixed capital that is of an onerous character (*Anglo-Persian Oil Co.* v. *Dale* and v. *C.I.R.* (1931), 16 T.C. 253). When expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is good reason, in the absence of special circumstances, for treating such expenditure as capital (*Atherton* v. *British Insulated and Helsby Cables* (1924-25) 10 T.C. 192).

A rough criterion of capital as distinguished from revenue expenditure is to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year (*Vallambrosa Rubber Co.* v. *Farrar* (1910), 5 T.C. 536). There is no stress upon the words "every year." The real test is between expenditure which is made to meet a continuous demand for expenditure as opposed to an expenditure which is made once and for all (*Ounsworth* v. *Vickers* (1915), 6 T.C. 675). The criterion is not . . . a decisive one in every case (*Atherton* v. *British Insulated, etc., supra,* at p. 192), [but] has been approved and accepted in several cases (*Small* v. *Easson* (1920), 12 T.C. 355).

It cannot be suggested that the word "asset" in Part II of the Seventh Schedule of the Act (Finance (No. 2) Act, 1939), as applied to a trade or business, is restricted to material things that you can touch and see, because it includes debts. It obviously includes rights of every sort, and even such an intangible possession as goodwill . . . (and) the appellant did, by the payment it made in 1940 (a lump sum payment) to the trustees of the superannuation fund, acquire an asset. . . . (*Lever Bros. and Unilever* v. *C.I.R.* (1944), T.R. 250).

Fact v. Law

An appeal from the Commissioners by case stated is an appeal on law only, and the Courts are bound by the findings of fact. It is always necessary, therefore, to have a clear understanding of how far it is possible to go before advising on recourse to the Courts. While an accountant should always advise that this be decided by his clients' legal advisers, he should be able to appreciate the position himself.

It can be said that the following are points of law:

(1) Where the Commissioners have misconstrued a section of an Act.
(2) Where they have not done or applied their minds to doing that which the Section directed.
(3) Where they have included, in coming to their result, some element—where the result is one of money and of value—which they ought not to have included.
(4) Whether there is evidence on which a certain finding of fact can be made.
(5) That there was no evidence to support the finding.
(6) Where the conclusion come to by the Commissioners is one on mixed questions of fact and law, or clearly invites a decision on a point of law.
(7) The method on which accounts are to be kept.
(8) Whether or not a particular sum is deductible from the gross profits.
(9) Whether or not a particular activity is a trade or business within the meaning of Sched. D (but whether two or more trades are being carried on depends on facts).
(10) Whether or not a purpose is charitable.
(11) How money recovered under an insurance policy is to be dealt with.
(12) The correct interpretation of words, *e.g.*, "residence."

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

Income Tax—"Error or mistake"—Part of a company's premises let as a site for advertisements—Rent received included in computation of profits for assessment under Case I of Schedule D sent in by company's accountants and so assessed—Correctly taxable as a hereditament under Schedule A—Admission of claim resulting in exclusion of charge to tax—Regard to all the relevant circumstances—F.A., 1923, Section 24.

The issue in *Carrimore Six Wheelers, Ltd.* v. *C.I.R.* (K.B.D., May 17, 1944, T.R. 221) is set out in the heading. In view of the result of admitting the claim, the Commissioners of Inland Revenue had refused it; and their decision had been upheld by the Special Commissioners. Macnaghten, J., affirmed their decision. Under the section, the Commissioners have to consider whether the granting of relief would result in the "exclusion from charge to income tax" of any part of the profits or income of the applicant. It was argued that the words "under Schedule D" ought to be read after "charge to tax"; but the Judge pointed out that there was only one income tax, and the words meant exactly what they said.

Schedule D—Case I—Brewery company acquiring the whole of the business and property of another brewery company—Vendor company or its nominees receiving 340,000 out of 400,000 authorised cumulative preference shares and 921,760 out of 1,000,000 ordinary shares—Purchasing company incorporated on February 25, 1937, the date of sale agreement, and on same day name changed to that of vendor company—On February 26, 1937, acquisition by purchasing company of business and properties of another company dealing in alcoholic liquors—Provisions in both sale agreements for prompt winding-up of vendor company—59 licensed houses acquired under agreements, 43 freehold and 16 leasehold—Houses let to tenants subject to payment of premiums and annual rents—Premiums paid to vendor companies—Whether in computing profits of purchasing company the premiums to be taken into account in computing the expense of maintaining the licensed houses.

Lucas v. *Charles Hammerton and Co., Ltd.* (K.B.D., May 15, 1944, T.R. 223) was a case where there was a variation in the facts upon which the decision in *Hoare and Co., Ltd.* v. *Collyer* (1932, A.C. 407, 17 T.C. 169), was based. In that case the House of Lords had decided that, in applying the *Usher* principle whereby the tied houses of a brewery were in part regarded as business premises of the undertaking, any premium paid by the tied tenant must be taken into account in computing the difference between the rent paid by the tenant and the Schedule A assessment in the case of freeholds, and between the rent paid by the tenant and that paid by the brewery in the case of leaseholds. In the present case, the premiums had been paid by the vendor companies and the question was whether the *Hoare* decision applied. The General Commissioners had found in favour of the company; but this was reversed by Macnaghten, J.

He said that the premiums had to be spread over the period of the lease, and that if the brewery business were sold it did not matter whether the purchaser received the premium because, for purposes of assessment, it must be regarded not as having been received on the day when the lease was granted, but as being received year by year during the currency of the lease.

It is somewhat difficult to follow this reasoning. In the writer's opinion, the economic principle involved is the same as that in *Law Shipping Co., Ltd.* v. *C.I.R.* (1923, 12 T.C. 621), where a ship was bought when an expensive Lloyd's survey was overdue and the purchasers had to spend a large sum in repairs. Here the consideration paid by the purchasing company to the vendor companies would have been reduced by reference to the fact that part of the consideration for the leases to the tied tenants had been received by the vendor companies. The decision is unquestionably sound in economics; and the spreading of the premiums over the periods of the leases would seem to be correct. It is, however, a somewhat nice legal point.

Income Tax—Petition of Right—Foreign company paying dividends less tax to U.K. residents—Dividends paid through agent assessed under Rule 7 of Miscellaneous Rules of Schedule D—Same company receiving taxed dividends from four U.K. companies, also loan interest less U.K. tax, and bank interest directly assessed upon its U.K. agents —Claim to repayment under Gilbertson *v.* Fergusson *of part of the tax paid to the Crown by its agent in U.K.*

Canadian Eagle Oil Company, Ltd. v. *The King* (C.A., May 24, 1944, T.R. 227) was noted in our issue of February, 1944. In the Court of Appeal the judgment of Macnaghten, J., was unanimously affirmed. Following the case of *Barnes* v. *Hely-Hutchinson* (1940, A.C. 81, 22 T.C. 655), the principle established in *Gilbertson* v. *Fergusson* (1881, L.R. 7, Q.B. 562, 1 T.C. 501) must be regarded as not only limited in application, but even then of doubtful validity. Here, as in the lower Court, it was held that even if a claim to "double-charging" relief was feasible, it was only the individual shareholder, and not the paying company, who could make it. The Court did not find it necessary to deal with the question of procedure referred to in our previous note. Leave to appeal to the House of Lords was given.

Income Tax—Occupation of permanent watercress beds—Whether "nurseries or gardens for the sale of the produce" —Schedule B, Rule 8, F.A., 1941, Section 52 (7).

Roberts v. *Barter's Executors* (K.B.D., May 24, 1944, T.R. 237) arose out of a decision by the General Commissioners that "the state of cultivation of the watercress beds was not such as to bring the beds within the classification of nurseries or gardens." Naturally, it was argued for the respondent that the question was one of fact; but Macnaghten, J., allowed the Crown appeal upon the ground that the Commissioners had misapprehended the meaning of the word "garden" in Rule 8. This had been explained, without precise definition, in *Bomford* v. *Osborne* (1942, A.C. 114, 23 T.C. 642), and, according to the description of the place and of the cultivation set out in the stated case, their decision was erroneous in law.

In *Roberts* v. *Williamson* (K.B.D., May 24, 1944, T.R. 241), the facts were similar except that in addition to occupying fourteen acres of watercress beds, the respondent occupied 1,000 acres of farm land; and the whole acreage formed and was worked as a single unit without a separate labour force. Macnaghten, J., in reversing the Commissioners' decision, said that in *Bomford* v. *Osborne* it was clearly indicated that a case might arise where a separation of the farm into two parts would be proper; and that, if there ever could be such a case, this was it.

E.P.T.—Capital employed—Lump sum payment to superannuation fund—Whether "asset" acquired—Finance (No. 2) Act, 1939, Schedule VII, Part II, paragraphs 1 and 4.

In *Lever Brothers and Unilever, Ltd.* v. *C.I.R.* (K.B.D., June 6, 1944, T.R. 247), a question of very considerable financial importance was involved. The details would not seem to be of particular interest, the basic question being whether a concern which makes a large contribution to a superannuation fund for the benefit of its employees thereby acquires an "asset." Macnaghten, J., in reversing the decision of the Special Commissioners, put the matter quite bluntly when he said that they apparently thought that the appellant had paid the money for nothing, as if, for instance, it had given the money to the Chancellor of the Exchequer to reduce the National Debt. He also pointed out that under Section 32 of F.A., 1921, the C.I.R. had to allow the contribution as a trading expense either in the year 1940 or over a period of years. By reason of Para. 4 of the 7th Schedule, this allowance would again reduce the capital, with the result that eventually the latter would be reduced twice over.

Excess Profits Tax—Profession—Optician—Profits mainly derived from sale of spectacles—No qualifications as eye doctor or ophthalmic surgeon—Whether a profession dependent wholly or mainly on personal qualifications—Finance (No. 2) Act, 1939, Section 13 (3).

The case of *C.I.R.* v. *Carr* (C.A., July 11, 1944, T.R. 251) was noted in our issue of June last. The General Commissioners had found that Mr. Carr was entitled to the professional exemption from E.P.T., but Macnaghten, J., had held that they had misdirected themselves in law. In the Court of Appeal it was held unanimously that there was evidence to support the Commissioners' finding and it could not, therefore, be disturbed. But it was expressly stated by Scott, L.J., and du Parcq, L.J., that their decision did not mean that opticians as a class carry on a profession or that they would have similarly decided the matter. It was a decision upon a particular case; and it was for this reason that leave to appeal to the Lords was refused.

The desire of the Revenue to get a class decision will be readily understood.

Excess Profits Tax—Standard period—Manufacturing company—Complete accounts, after stocktaking, made up at end of each half-year—Audited and approved at directors' meetings—Annual general meetings, October-November —Shareholders' accounts cover each 12 months ending June 30—Obtained by aggregation of half-yearly figures—Whether accounts made up for successive periods of 12 months—F.A., 1937, Section 20 (2)—Finance (No. 2) Act, 1939, Sections 13 (4), 14 (1), 22 (b).

Jenkins Productions, Ltd. v. *C.I.R.* (C.A., July 12, 1944, T.R. 255) was noted in our issues of February and May last. In the Court of Appeal the decision of Macnaghten, J., had been reversed; but the Master of the Rolls, giving the only judgment in the case, had, in effect, held that the C.I.R. had not carried out the duty imposed upon them by Section 14, sub-section (1) of the 1939 Act; and the rest of the case was held over until this had been done. It had been made quite plain how the Court thought that the discretions given by the sub-section should be exercised; and counsel for the Revenue now appeared and showed that the wishes of the Court had been carried out. The case ended in a shower of compliments for the C.I.R., but with the latter agreeing to pay the appellants' costs.

The case is a remarkable example of the Court's *de facto* power to control the Executive, even where the statutory power to do so is either limited or non-existent.

The President on Private Enterprise

A luncheon arranged by the Hull and District Society on November 3, 1944, was attended by Mr. Richard A. Witty, F.S.A.A., President of the Society, and Mrs. Witty, the Lord Mayor and Lady Mayoress of Kingston-upon-Hull, and His Worship the Sheriff and his Lady. Mr. A. H. Crumpton, F.S.A.A. (President of the District Society) was in the chair. Mr. A. A. Garrett, Secretary of the Society, was also present, and a representative gathering of the chief business, professional and educational interests in Hull and district. The luncheon was given in the Guildhall.

The District Society covers the East Riding of Yorkshire and part of the North Riding and North Lincolnshire, including Grimsby and Scunthorpe. In proposing the health of the local authorities of Hull and district, Mr. George Muff, M.P., said that Hull wished to assert its independence and not be "cribbed, cabined or confined" by London. The Lord Mayor (Alderman F. R. Fryer, J.P.), in replying to the toast, refused to be drawn into discussion on the highly controversial subject of the extension of the boundaries of Kingston-upon-Hull, but hoped all local authorities would co-operate in a spirit of goodwill to bring prosperity back to the port of Hull and to the neighbouring districts.

His Worship the Sheriff (Mr. H. I. Loten) proposed the toast of the Society. He pointed out that, though he was proposing the toast as the Sheriff, his experience of accountants was in his capacity as a banker, and from that point of view he would like to emphasise the close co-operation there was between accountants and bankers. In these days a bank manager welcomed a visit from an accountant with his client, as it so often meant further consolidation. In the old days of the depression, such a visit, especially in the company of the client's solicitor, was not so welcome, as then it meant liquidation. In his opinion, an accountant could best be described as a guide, philosopher and friend. His wise counsel and good advice could be of inestimable help to his client, and he could survey the worst as impartially as the best. He welcomed Mr. Witty to Hull.

Mr. Richard A. Witty, in replying, referred to the Society's plans for helping young members and students returning from H.M. Forces, and visualised the possibility of running ten or twelve-day refresher courses for them, designed to rehabilitate them in their professional life. He also mentioned the question of co-ordination of the accountancy profession. He asked the members to realise the difficulties of negotiations of this character, but promised that he would make a definite announcement to the members at the earliest possible moment. Mr. Witty then discussed the possible control of private enterprise in the post-war period. He said that a definite suggestion had been made that the relationship between the Government and private enterprise in the future might partake of the nature of a partnership to a much greater degree than hitherto. No indication was given, however, whether the Government would desire to be a sleeping partner, concerned only in a share of the profits, or whether the Government should be an acting partner with the right to a voice in all matters of management. If the Government were to be an acting partner, this would inevitably lead to dual control and, having regard to the way in which Government Departments overlapped each other, it might in many instances mean in effect triple or quadruple control. Such a condition could not be for the benefit of the country as a whole. There was general agreement as to the need for greater co-operation between industry and Government Departments, particularly in relation to the flow of exports and imports. That could be achieved by the setting up of liaison bodies representative of each trade and profession where they did not already exist, but he did not think it could be achieved by direct participation in the normal management of every business. The commercial prosperity of this country had been built up on the free play of personal initiative, and it was well to remember that every great business of to-day was originally founded by an individual. These facts were known in Government Departments as well as in commercial offices, but a war period inevitably increased the danger of extensive official control, and it would be necessary to watch very closely that that danger was not perpetuated and perhaps aggravated in the days of peace.

In referring to the proposals for social insurance, Mr. Witty welcomed the appointment of Sir William Jowitt as Minister-Designate to be in charge of the new Ministry for administering these proposals. Sir William Jowitt was well known to accountants, and whilst in charge of post-war reconstruction had made himself familiar with the desires of the accountancy profession to devise some scheme of co-ordination within the profession as a necessary part of the broader question of general reconstruction. Mr. Witty added that the figures involved in social insurance, especially in twenty and thirty years' time, were stupendous, but not frightening. To accountants figures were stubborn facts and not meaningless symbols, and accountants could render a real service to the community by helping to clarify the budgetary estimates which had been made as to the cost of the new proposals.

Mr. A. H. Crumpton, in proposing the toast of "Our Guests," extended a cordial welcome to Mr. and Mrs. Witty, and said how much he and his fellow members appreciated what the President and Council were doing for students and young members. He also welcomed the civic heads and the official guests. In reply, Mr. Geoffrey Hindson said that the luncheon was certainly a good advertisement for the Midland Bank, as both he and the Sheriff were members of that bank, and it was very kind of the Hull Incorporated Accountants to give them such publicity, especially as the accountancy profession was not allowed to advertise and the banks were. (Laughter.) He and all the other guests appreciated the hospitality they had received, and wished the Hull and District Society every success.

OBITUARY

WILLIAM LANGLANDS PATTULLO

We regret to report the death of Mr. William L. Pattullo, Incorporated Accountant, Dundee, which took place on October 21. Mr. Pattullo, who had been at business two days previously, was a member of the firm of MacKay, Irons Co., of Dundee and New York, which he joined in 1903. He was a director of a number of companies, and associated with several beneficent and charitable institutions in Dundee. He was 74 years of age, and became a member of the Society in 1896, having taken Honours in the Final Examination. He was a member of the Council of the Scottish Branch for forty years, and his regular attendance and kindly interest in the work of the Society in Scotland were highly appreciated by his colleagues.

The Late Mr. Henry Morgan

An Appreciation

The death of Mr. Henry Morgan on November 3 has caused widespread regret throughout the Society and the accountancy profession. Mr. Morgan courageously carried on with his work until a short time ago, despite the fact that he had not enjoyed robust health.

For many years he had devoted himself to the reform of company law, particularly in regard to the duties of auditors of companies and the form of the accounts. Although at one time his views were somewhat in advance of those of other leaders in the profession, his activities stimulated thought on these questions, which has recently been focused in the evidence submitted to the Cohen Committee on Company Law. It was a disappointment to him that the state of his health prevented his giving evidence in person in support of the memorandum forwarded to the Cohen Committee on behalf of the Association of British Chambers of Commerce.

Throughout his career he took an active interest in the affairs of the Society. After completing his articles with Mr. Henry Burgess, Incorporated Accountant, Mr. Morgan became a member of the Society in 1904, commenced practice in the City of London, and established the firm of which he was the senior partner, two of the other partners subsequently being his brother, Mr. F. W. E. Morgan, F.S.A.A., and his nephew, Mr. Geoffrey Morgan, F.S.A.A. Mr. Henry Morgan shrank from few tasks which claimed his time and ability, and it was a great advantage to the Incorporated Accountants' Students' Society of London that, as its then President, he kept the organisation in being during the difficult years of the War in 1916-1919.

When he was elected to the Council of the Society in 1920, he rapidly impressed his colleagues with his ability and judgment, and he took a notable part in formulating the policy of the Society, particularly during his successful Presidency in 1929-1932. At the time he was Vice-President, the Council were arranging the purchase of Incorporated Accountants' Hall, and his colleagues entrusted to him, with complete confidence, the conduct of the negotiations, which were brought to a successful issue.

Subsequently to his Presidency, Mr. Morgan was not less assiduous in his work on the Council, and sustained the responsibilities of Chairman of the Examination and Membership Committee and of Chairman of the Disciplinary Committee. In these offices he had great regard for the maintenance of a high standard for admission to membership and a high standard of professional conduct. The London members recall the pleasure which he gave when he was Chairman of the London District Society in 1935-1936.

In another direction, Mr. Morgan rendered notable service to the life of the City of London. He was the representative of the Society on the Council of the London Chamber of Commerce, of which he was Chairman from 1938 to 1941. In addition he was on the Council of the Association of British Chambers of Commerce, and as Chairman of its Finance and Taxation Committee and subsequently as President of the Association in 1942-44, it fell to him to submit the views of the Association annually to the Chancellor of the Exchequer on taxation. He had a keen grasp of taxation problems, and he carried a heavy burden as President of the Association at a time when an immense number of war-time problems demanded his constant attention. It gave him particular pleasure to preside at a luncheon given by the Association in 1943 in honour of Mr. Eric A. Johnston, the President of the American Chamber of Commerce, when the Association also entertained the Hon. John G. Winant, His Excellency the Ambassador of the United States of America, and the Right Hon. Viscount Halifax, the British Ambassador in Washington.

To his many friends Mr. Morgan was a generous host and a welcome guest, whether in the City or at home. He had been President of the Montgomeryshire Society in London and served the office of High Sheriff of that County, which was his birthplace. In his leisure, he was a keen golfer and fly fisherman, and was interested in County cricket and Test matches.

The memorial service at St. Michael's, Cornhill, was conducted by the Rector, the Rev. Prebendary G. F. Saywell, and was attended by a large and representative congregation of Mr. Morgan's friends. Among those present were Mrs. Henry Morgan, Mr. F. W. E. Morgan, Mr. Geoffrey Morgan, and other members of the family; the Right Hon. Lord Iliffe; the President of the Society, Mr. Richard A. Witty, the Vice-President, Mr. Fred Woolley, other members of the Council and the Secretary; Mr. R. Wynne Bankes, Secretary of the Institute of Chartered Accountants; and representatives of the Association of British Chambers of Commerce, of the London Chamber of Commerce, of the London District Society of Incorporated Accountants, and of the London Students' Society. We extend the sincere sympathy of every member of the Society to Mrs. Morgan and the other relatives.

OBITUARY

FREDERICK MARTIN JENKINS

We record with much regret the death of Mr. F. Martin Jenkins, Incorporated Accountant, which occurred, after a short illness, on November 12.

Mr. Martin Jenkins was admitted to the Society in 1901, and for many years practised in Westminster. During his career he travelled extensively on professional business.

When the London District Society was formed in 1930, Mr. Martin Jenkins became a member of the first Committee. He was a keen supporter of the activities of the London District Society, and after serving the office of Hon. Treasurer, was elected Vice-Chairman in 1943.

At the annual meeting of the District Society held in October, 1944, his colleagues unanimously elected him Chairman, and were looking forward to an extension of activities under his chairmanship. Before the war, Mr. Martin Jenkins regularly attended the meetings of the Incorporated Accountants' Golfing Society.

He will be much missed by his friends on the London District Society, who appreciated his genial personality and always welcomed his presence at the meetings, particularly when he took the chair.

The funeral was attended by Mr. J. A. Jackson, Joint Hon. Secretary of the London District Society, and by Mr. James C. Fay, who also represented Mr. A. A. Garrett.

Company Law Amendment Committee

Our summaries of the chief points raised in written and oral evidence before the Company Law Amendment Committee are concluded this month with the latter part of the twenty-fourth day's proceedings (July 25, 1944) and those of the twenty-fifth day, July 26. We again advise readers who are interested to peruse the full Minutes of Evidence, which have been published by H.M. Stationery Office.

Trades Union Congress

The proceedings on the twenty-fourth day concluded with evidence for the Trades Union Congress, offered by Sir Walter Citrine, Mr. George Isaacs, M.P., and Mr. Edwin Fletcher. The principal point on which the T.U.C. memorandum laid stress was that there should be adequate information as to the business affairs of limited companies. Sir Walter was asked if he held it essential that this information should be on the file at Bush House and available to the public, it being suggested that some of the objections raised to a wider distribution of information than is required at present would be met if the details were available only to shareholders and employees' representatives. The witness declared that the fear of competition as a reason for the privileges of non-disclosure was very greatly over-rated. He pointed out that trade union policy, certainly in the last fifteen years, had concentrated more upon arbitration, conciliation and courts of enquiry, and that for a trade union to present an intelligent case to an arbitration in support of an advance in wages, it had to have facts to sustain its claim. At present, he contended, a union very often framed its claim not so much on what it knew to be the facts as on what its members believed to be the facts.

Asked if he agreed with the General Federation of Trade Unions that much progress would be achieved if it was possible for the unions to get the same information about a private company as they already get from published accounts of public companies, the witness said that he would not feel it was a satisfactory position : the opportunities for concealment were already very considerable in public companies. Sir Walter objected to the non-disclosure of reserves on the ground that it leads to suspicion that there is probably a great deal more profit concealed than is actually concealed. On the question of dividends, he agreed that it was completely misleading to take merely the dividend in percentage form. " One has to find out what was paid for the actual shares on which the dividend is based, but broadly speaking, it would be impossible to get over to the workpeople that sort of thought." Urging that directors' remuneration should be disclosed, he said the unions wanted to find out whether " businesses are waterlogged at the top." Discussing the possibility of standardised forms of accounts being adopted, he referred with approval to " Design of Accounts," published for the Incorporated Accountants' Research Committee.

The T.U.C. recommends that powers be given to the Board of Trade to order an investigation into the affairs of any company " whenever they think fit." When it was put to him that the words quoted might be " a little bit too wide," Sir Walter said, " I always have some confidence in a Government Department, and a knowledge of its reluctance to butt into a controversial field if it can keep out."

Imperial Chemical Industries

Representatives of Imperial Chemical Industries gave evidence on the twenty-fifth day. Mr. J. E. James said that the company had an issued capital of over £74,000,000, all in £1 units of stock, and spread over approximately 200,000 holdings. Nevertheless, the company favoured a system of compulsory disclosure of beneficial ownership on the grounds that, if there was a demand for this information, there was no reason whatever to withhold it. The company's suggestion was that the person enjoying either beneficial ownership or voting control should make the declaration ; this would distribute the labour more equally than if the company were left with the responsibility of tracing the beneficial owner. Asked if he would impose a penalty in the sense that unless the declaration were lodged within a certain period the company would not pay any dividends to, or allow any voting rights to be exercised by, the holders of those shares until the information had been obtained, Mr. E. A. Bingen thought this a very effective and a reasonable way of doing it. When it was observed that this would involve the company in sending out 200,000 circulars, Mr. James said " We can do that."

The company's memorandum suggested that the records to be kept in a company's books of account are at present defined by the Act in terms which are no longer in accordance with current business requirements. Mr. J. L. Armstrong suggested the following formula : " Such books and documents as are necessary to maintain proper records of all financial transactions and to enable the true position of the company to be arrived at therefrom." The witness was opposed to a definition of " Books of account " being included, a suggestion made in view of the modern development of mechanical accountancy and card bookkeeping, because he did not want loose-leaf account books not to be held books of account. Mr. James expressed the company's general view that loans to directors should not be permitted. He revealed that Imperial Chemical Industries defined, for its own purposes, an associated company as a company in which its shareholding is 50 per cent. or less, but not less than 20 per cent., including a subsidiary of such a company ; or it may also be a company in which its shareholding is less than 20 per cent., but which has a connection with it by some form of commercial or technical agreement or arrangement.

The company recommended that the auditors' right of access to the books, accounts and vouchers of the company should be limited to what is necessary for the performance of their duties. Mr. James explained that it was considered most improper that the auditor should see the processes, research documents, and so forth, which had nothing to do with his work. The chairman suggested that " You could hardly do anything more dangerous than to impose such a limitation. It would tend to be used not for the purpose you have in mind, but for keeping the auditor in the dark as to some financial matter which a disreputable director did not want him to find out." He added : " It would be difficult for you to say that all information as regards processes was fully outside the purview of the auditor, because one of the items in your balance sheet relates to intangible assets, including processes, patent rights, mineral rights, for over £1,000,000."

FINANCE

The Month in the City

The principal event of the past month has been the replacement of National War Bonds 2½ per cent., 1952-54 by an issue of 1¾ per cent. Exchequer Bonds, 1950. Before this change was announced, subscriptions to National War Bonds had been declining, as a result of the public's increasing preference for liquidity in anticipation of post-war reconstruction expenditure. In spite of this tendency, it had not been generally expected that the Treasury would make such a forthright attempt to meet the need for a short-dated security. When the issue of the new bonds was announced, its effect was to produce a general rise in gilt-edged prices. In part this may have been due to the mistaken idea that a bond bearing interest at 1¾ per cent. meant even cheaper money, whereas in fact, bearing in mind the early redemption date, the return on the new issue fitted exactly into the existing structure of gilt-edged yields. On the other hand, the new issue has some relevance to the " cheap " money prospect, since it indicates how the authorities can influence the long-term rate of interest by varying the relative supply of long- and short-dated securities. The news of the new issue, for example, was followed by quite a substantial rise in the prices of long-dated British Funds, and by an unprecedented last-minute rush of subscriptions to National War Bonds, 1952-54. In their last week of issue, these bonds brought in £126.4 million, an even larger sum than had ever been achieved during the Savings Weeks.

R. Thomas and Baldwins

The news that a merger is to take place between Richard Thomas and Baldwins marks the most important development in the steel industry for many years. Baldwins' plant is old-fashioned by comparison with the continuous strip mill owned by R. Thomas, and it is hoped that the fusion of the two companies' interests will aid the technical rationalisation of the whole of the South Wales tinplate and sheet industries. In exchange for the transfer of its physical assets to R. Thomas, Baldwins will receive R. Thomas ordinary shares, but will presumably retain its other assets, such as the investment in Guest Keen Baldwins. It will, in fact, become purely a holding company. From the technical point of view, it would seem that this is likely to be an advantage to Baldwins, because the company could not alone compete with R. Thomas on the large orders. From the financial aspect, it is impossible to judge the merits of the exchange until it is known how many R. Thomas ordinary shares will be allotted to Baldwins in exchange for its physical assets. At all events, it is clear that Baldwins' revenue will depend primarily on the income received from the holding of R. Thomas ordinary. In these circumstances the preference shares of R. Thomas must now be regarded as ranking ahead of the Baldwins' preference issues, except in so far as the latter are covered by other investment income. At the same time as this transaction goes through, R. Thomas propose to repay the whole of the prior lien debenture stock, and thus to terminate outside control by July, 1945. It is not yet known how this repayment is to be financed ; the company's liquid resources would be very ample for the purpose, but the chairman stated at the last meeting that they would be required for the programme of modernisation after the war. The debenture repayment would not, of course, preclude the Control Committee from exercising the voting power conferred by their holding of ordinary shares, but it has been authoritatively announced that these votes will not be used at the meetings where the merger proposals will be discussed. One financial consequence of the prior lien debenture repayment will be that the 4½ per cent. mortgage debentures will now revert to their position before the prior lien stock was issued. They can therefore be repaid at any time, and their rate of interest falls back to 4 per cent.

Argentine Concessions

Sir Montagu Eddy's second visit to Buenos Aires in the interests of the Argentine railways has found the Argentine authorities in a much more conciliatory mood. The rate increases already prevailing have been extended for another two years, an additional 10 per cent. has been granted on freights, and improved exchange rates have been given both for financial remittances and for payments for imported materials. In the case of financial remittances, the rate has been changed from 16.15 pesos to the pound to 14.15, and for imported materials the rate has been lowered from 15 to 14 pesos to the pound. At the same time, there have been wage increases, and the wage retentions, though reduced, still amount to a considerable sum. It is consequently difficult to assess the net advantages which the railways will derive from the change, particularly as costs are still rising. At the same time, the substantial exchange concessions mean that the companies will be getting 13 per cent. more sterling for their pesos than before, and there can be little doubt that all these improvements taken together do indicate a distinct change of policy towards foreign capital on the part of the Argentine authorities.

Change of Policy

The explanation for this change must be sought in both economic and political factors. With the war drawing to its close, it must have become increasingly apparent to Argentina not only that the United Nations are going to win, but that it will be necessary to do more trade with them afterwards. In addition, the American attitude towards the present Argentine régime has led Argentina to look elsewhere for friends. This may be a somewhat difficult position for Great Britain, to whom the present Argentine Government will not appear as democratic as could be wished. This, however, would be no reason for rejecting the better treatment now proffered towards British capital, which has long felt itself to be the object of unfair discrimination. It remains to be seen if the present Argentine attitude will be durable, but at least it seems to make the railways' position more tolerable during the remaining two years before the expiry of the Mitre Law. There is no indication yet as to what arrangements will take the place of this basic law, which governs the operations of the British companies in Argentina, and has kept them free from most tax liabilities and from the payment of duties on imported materials. The present concessions must therefore be regarded as being of an interim nature, and leaving even more difficult problems to be solved in the future. At all events the British Government, through Mr. Richard Law, has now made it clear that the authorities are watching the position with particular concern.

Points from Published Accounts

United Steel Companies

The profit and loss account submitted by the United Steel Companies consolidates the results of the parent company and its subsidiaries, " other than two small subsidiary companies partly owned which have been treated as associated companies." The trading surplus (including gross income from associated companies and other miscellaneous income) is stated subject to a transfer of £125,000 to the central reserve for obsolescence, but, for some reason which it is not easy to discern, after making provision for depreciation of an undisclosed amount. The consolidated balance sheet shows that group reserves for depreciation and obsolescence have been increased by £949,729 to £7,775,178, which, allowing for that part of the growth represented by the specific provision for obsolescence, would imply that £824,729 has been appropriated from 1943-44 revenue for depreciation. If this is so, why not incorporate the information in the profit and loss account ? After directors' fees and interest the balance of profit for the year is £2,288,675. This is officially compared in the directors' report with £2,026,579 for 1942-43 and £1,916,132 for 1941-42, but the expansion recorded is put in the right perspective in the chairman's statement, which observes that " the variation in results from year to year may be taken to be due more to the intricacies of assessing war-time taxation than to any other factor." Incidentally, while in the consolidated balance sheet an unspecified provision for taxation is included in an omnibus creditors item of £8,322,446, a reserve for taxation amounting to £2,348,620 is shown among reserves totalling £14,154,594. These exclude a sum of £403,048 representing the excess of the value of the net assets of subsidiaries over the book value of the parent's interest in these concerns. But they include the £7,775,178 reserves for depreciation and £2,437,980 described as " reserves for maintenance and repairs and for other purposes." Although the form of the balance sheet has been re-arranged, there is still scope for improvement here. It would be better to group the free reserves, including the £403,048 sum mentioned above and the profit and loss balance of £519,304, also shown separately at present, into one item and the specific reserves into another. Better still, such part of the depreciation and obsolescence reserves as represents depreciation and obsolescence accumulated to date might be shown as a deduction from the group's main fixed assets, at present brought in, at 1937 valuation after adjustments, at £21,175,968.

Debenhams

This matter of reserves is handed in a rather better way by Debenhams. The principle of grouping adopted by this company is a helpful one. In the consolidated balance sheet capital reserve and the general reserve are bracketed together in an item of £923,858, and another entry of £531,258 is made up of the profit and loss balance and the excess of reserves of subsidiaries after elimination of goodwill. A third group is headed " specific reserves," but the detail provided is inadequate, the total of £1,466,251 being composed of sinking funds for buildings, £218,856, and " other specific reserves," £1,247,395. The group's fixed assets amount to £19,263,478 and comprise freehold and leasehold buildings, at cost or valuation, £17,022,494, and fixtures, fittings, plant, etc., at cost less amounts written off, £2,240,982. The consolidated profit and loss account which is submitted provides a classic example of the utility of such statements. On the basis of the figures furnished for the parent company alone, the increased dividend of 25 per cent. on the small, highly-geared equity capital is covered twice over. But the undistributed profit and loss balances carried forward by the subsidiaries have risen from £1,493,632 to £1,688,890. Of this increase £27,886 is clearly shown to be due to the inclusion of an accumulated profit and loss balance of a company acquired during the year. The net increment is therefore £157,372 and this is equivalent to a dividend of 63 per cent. on the parent company's ordinary capital. In other words the 25 per cent. dividend is actually covered four-and-a-half times by group earnings.

Lambton, Hetton & Joicey Collieries

The accounts of Lambton, Hetton & Joicey Collieries for the year to June 30 last, are the first to be issued since the company was made public in the autumn of last year. A statement for information then circulated showed, *inter alia*, that in 1942-43 a net profit of £278,046, before taxation or making any allocation to reserves, had been secured, that a dividend of 6 per cent. had been paid, that £114,887 had been carried to reserve and that £109,391 (against £147,732) had been carried forward. Comparative figures inserted in the latest accounts indicate that the " amount carried to reserve " was made up of provision for deferred repairs, £89,887, and reserve for redemption of debentures, £25,000. To the extent that they are obligatory these allocations have an influence on the amount of profit available for distribution by way of dividend, and, that being so, their nature might with advantage have been indicated at the time. On this occasion there is another appropriation of £25,000 to debenture redemption reserve. The provision for deferred repairs is cut to £10,113, but there are new debits for £56,351 transferred to workmen's compensation liability reserve and £6,720 to damage suspense account. After paying the preference dividend, making a total distribution of 7 per cent. on the ordinary stock and providing for these total reserve allocations of £97,734, there is a small addition to the carry-forward, raised from £109,391 to £111,921. But in large part this result is due to the inclusion in the year's profit of £88,574 received for additional price allowance. The chairman's speech makes it plain that this credit relates to the period from January 1, 1942 to June 30, 1943, and, consequently, " really belongs to previous years."

Massey's Burnley Brewery

A curious practice is followed by Massey's Burnley Brewery in the disclosure of particulars of tax provisions. For 1943-44 the profit and loss account records a " balance of trading account for the period after providing for income tax " amounting to £125,087. But the directors' report discloses a profit of £250,087, subject to deduction of £125,000 transferred to reserve for taxation. If there is any special reason why such important information as the amount of the prime profit figure and the sum absorbed by taxation should be incorporated in the directors' report rather than in the profit and loss account, that account should at least be endorsed with a note intimating that these vital particulars are to be found elsewhere.

Extra Statutory Tax Concessions—I

We are publishing in two instalments the full text of the recent White Paper (Cmd. 6559), "A List of Extra-Statutory Wartime Concessions given in the Administration of Inland Revenue Duties." The section on Excess Profits Tax is given below; the sections of Income Tax, N.D.C., Death Duties, and Stamp Duties will appear in our next issue.

The war-time concessions described below are of general application, but it must be borne in mind that in a particular case there may be special circumstances which will require to be taken into account in considering the application of the concession.

EXCESS PROFITS TAX

1. "WORKING PROPRIETOR STANDARD".

The expression "working proprietor" is defined in subsection (2) of Section 13 of the Finance (No. 2) Act, 1939 (as amended by Section 31 (1) of the Finance Act, 1940) as meaning "a proprietor who has, during more than one-half of the chargeable accounting period . . . worked full time in the actual management or conduct of the trade or business". A partner in a partnership ranks as a "proprietor", as does a director of a director-controlled company who owns more than one-twentieth of the company's share capital.

In certain circumstances individuals are treated as "working proprietors" although not satisfying the strict terms of the definition, viz.:—

(i) "Proprietor" serving with the Armed Forces, Mercantile Marine or Civil Defence Forces.

Individuals who, but for the fact that they are serving with the Armed Forces or Mercantile Marine or full-time with a Civil Defence Force, would continue to qualify as "working proprietors" are treated as so qualifying.

An individual who is otherwise qualified as a "working proprietor" is treated as working full-time in a business if the hours devoted to the business are reduced to less than full normal working hours solely by reason of part-time service in the Home Guard or a Civil Defence Force.

(ii) "Proprietor" absent from work through temporary illness.

Where an individual who has hitherto worked such hours as to enable him to qualify as a "working proprietor" is prevented by temporary illness from working such hours in any chargeable accounting period, his temporary absence or inability to work full time is not regarded as disqualifying him from being treated as a "working proprietor" for that period.

(iii) "Proprietor" working in more than one business.

A "proprietor" working in the management or conduct of more than one business is treated as a "working proprietor" in that business to which he has devoted the largest part of his time during the chargeable accounting period, provided—

(*a*) he worked full-time in the businesses as a whole during more than one-half of the chargeable accounting period; and

(*b*) the time worked in the particular business in the chargeable accounting period amounted to more than one-half of the full normal working hours in that business.

Cases where part of the "proprietor's" time has been devoted to a profession or employment are treated similarly.

(iv) Trustee or manager working full time in business carried on by trustees.

Where a business is carried on by trustees, a claim to "working proprietor" treatment in the case of a trustee or other individual working full time in the business in a managerial capacity and having a vested interest corresponding to the qualification necessary for a "working proprietor" is allowed subject to appropriate disallowance of remuneration.

2. "WORKING PROPRIETOR STANDARD": COMPANY DIRECTOR-CONTROLLED FOR PART ONLY OF A CHARGEABLE ACCOUNTING PERIOD.

A "working proprietor standard" is accorded as respects any such period where—

(*a*) the company was director-controlled; and

(*b*) a director owning more than 1/20th of the share capital worked full time in the actual management or conduct of the trade or business

during a coincident period or periods aggregating more than one-half of the chargeable accounting period. The allowance of a "working proprietor" standard in such circumstances is subject to the disallowance as a deduction of any remuneration of the director concerned.

3. "WORKING PROPRIETORS" OF GROUPS OF COMPANIES.

A group of companies to which the Fifth Schedule to the Finance Act, 1940, applies (that is, a group consisting of a parent company and subsidiaries 90 per cent. or more of the ordinary share capital of which is owned, directly or indirectly, by the principal company) may elect to take such "working proprietor standard" as may be allowed in relation to the principal company (Rule 4, Part II, Fifth Schedule, Finance Act, 1940). In computing this standard, directors of the principal company with the necessary shareholding qualification who work full time in the management or conduct of the group as a whole, but do not satisfy the "working proprietor" definition in relation to the principal company as they do not work full time for that company, are treated as "working proprietors".

4. "PROFITS STANDARD": FARMER TAKING OVER ADDITIONAL HOLDING AT INSTANCE OF AGRICULTURAL DEPARTMENT OR AGRICULTURAL EXECUTIVE COMMITTEE.

Where a business, the Excess Profits Tax liability of which is computed by reference to a "profits standard", is extended by taking over another business, the normal rule is that the standard of the original business is increased by the addition of the standard period profits of the business taken over.

In the case of a farmer taking over an additional holding at the instance of an Agricultural Department or an Agricultural Executive Committee, the alternative is allowed of adding to the farmer's original standard either (*a*) double the Schedule B annual value of the new holding, or (*b*) £1,000 per "working proprietor" (up to four) in the farmer's business, whichever is the less. Where this is done, no account is taken, in computing adjustments for increased or decreased capital, of any fresh capital introduced in relation to the new holding. If the Schedule B annual value of the new holding was determined on the footing that the land was derelict, or semi-derelict, a revised annual value, based on the assumption that the land was cultivated, may be adopted.

5. "PROFITS STANDARD": WHOLE-TIME DIRECTOR OF DIRECTOR-CONTROLLED COMPANY WHOSE REMUNER-

ATION IS NOT ALLOWABLE IN COMPUTING PROFITS OF CHARGEABLE ACCOUNTING PERIOD BUT WHO WAS AN EMPLOYEE OR WHOLE-TIME SERVICE DIRECTOR IN THE STANDARD PERIOD.

Where the circumstances are otherwise unchanged, the remuneration of the director is not required to be deducted in computing the profits of the standard period.

Where the change in the position takes place during a chargeable accounting period, so that the remuneration for which no deduction is allowable is the proportion attributable to the part of the period subsequent to the change, a corresponding proportion of the standard period remuneration is not required to be deducted in computing the profits of the standard period in relation to the chargeable accounting period in which the change occurs.

6. "SUBSTITUTED STANDARD": COMPANY DIRECTOR-CONTROLLED THROUGHOUT CHARGEABLE ACCOUNTING PERIOD, BUT NOT IN STANDARD PERIOD.

Where a company is director-controlled throughout a chargeable accounting period, no deduction in respect of directors' remuneration is allowable in computing the profits of that period. Under Section 27, Finance Act, 1940, the overriding limitation to the "substituted standard" of a company is required to be computed at 8 per cent. of a capital figure if the company was director-controlled in the standard period, but at only 6 per cent. of that figure if it was not so controlled, and the standard once determined has effect for all chargeable accounting periods. Nevertheless, where a company is director-controlled throughout a chargeable accounting period but not in the standard period, the liability for that chargeable accounting period is computed as if the overriding limitation to the "substituted standard" were calculated at 8 per cent. of the relevant capital figure.

7. "SUBSTITUTED STANDARD": GOODWILL ACQUIRED BY PRINCIPAL COMPANY OF A GROUP OF COMPANIES ON ACQUISITION OF SHARES OF A SUBSIDIARY COMPANY.

In the computation of a "substituted standard", Section 27 (5), Finance Act, 1940, provides for an overriding limitation of 6 per cent. or 8 per cent. "on the average amount of the capital employed in the trade or business in the standard period, computed in accordance with the provisions applicable to the computation of capital for the purposes of excess profits tax". These provisions allow for the inclusion of goodwill in capital only where the goodwill was purchased as such, so that where a business carried on by a company was acquired by another company, prior to the standard period, by purchasing the shares of the company instead of the business itself they do not allow the inclusion in the capital of the acquiring company of any sum representing the value of the goodwill of the company whose shares were acquired.

In practice, however, where a principal company in a group of companies acquired by a transaction at arm's length the shares of a subsidiary company at a price which included an element representing goodwill of the subsidiary company, the goodwill element is, subject to certain qualifications, taken into account in computing the capital of the group for the purposes of the overriding limitation. This treatment is applicable to cases where the shares were acquired for cash, and also to cases where the shares were acquired in exchange for shares in the parent company, but in the latter case such part of the goodwill element as is proportionate to the continuing interest of the vendors in the goodwill of the subsidiary company, through the medium of the shares in the principal company, is not taken into account as capital.

8. "SUBSTITUTED STANDARD": ADJUSTMENTS FOR INCREASED OR DECREASED CAPITAL IN CASES WHERE A NET LOSS IS SUSTAINED IN THE FIRST 33 MONTHS FROM THE COMMENCEMENT OF THE BUSINESS.

In "substituted standard" cases subsection (2) of Section 30 of the Finance Act, 1941, permits certain losses incurred before the end of the standard period to be taken into account in computing the standard, but does not provide for such losses to be taken into account in comparing the capital of a chargeable accounting period with that of the standard period. In "percentage standard" cases, on the other hand, subsection (1) of that section permits the capital employed in a chargeable accounting period from April 1, 1940, to be increased by a net loss incurred in the period beginning on July 2, 1936 (or the later date on which the trade or business commenced) and ending on March 31, 1939, that is, a maximum period of 33 months from the commencement of the business. In order, therefore, to obviate a "substituted standard" being diminished as a result of the effect on the adjustment for increased or decreased capital of a net loss sustained in the first 33 months of a business, the adjustment in such a case is, if desired by the taxpayer and subject to conditions corresponding to those laid down in Section 30 (4), Finance Act, 1941, taken, in relation to periods from April 1, 1940, to be such adjustment as would be arrived at if the capital at any date within 33 months from the commencement of the business were increased by the net loss up to that date, and the capital at any date after the expiration of the 33 months were increased by the amount of the net loss for the 33 months.

9. "SUBSTITUTED STANDARD": BUSINESSES CARRIED ON BY TRUSTEES.

Section 27, Finance Act, 1940, in providing for the "substituted standard," does not provide in terms for a business carried on by trustees, but no objection is raised to an application by trustees for a "substituted standard" in respect of a business carried on by them.

10. DEDUCTIONS: DIRECTORS' REMUNERATION.

Directors' remuneration is, in general, not admissible as a deduction in computing the profits of a director-controlled company, but the Excess Profits Tax law excepts from this rule the remuneration of a director who does not own or control more than 5 per cent. of the ordinary share capital and devotes substantially the whole of his time to the service of the company in a managerial or technical capacity (Rule 10, Part I, Seventh Schedule, Finance (No. 2) Act, 1939, as amended by Section 33 (5), Finance Act, 1940). The following cases are treated as falling within the exception although they do not strictly comply with the conditions:—

(i) A director who, while otherwise satisfying the conditions, is prevented from devoting substantially the whole of his time to the service of the company because he is serving with the Armed Forces, the Mercantile Marine, or a Civil Defence Force.

(ii) In cases where the "minimum standard" or "working proprietor standard" is applicable, a director who, while working full time for the company, holds more than 5 per cent. of the ordinary shares but has not a sufficient shareholding to qualify as a "working proprietor"; but no greater amount of remuneration is allowed as a deduction than the amount by which the standard of the company would be increased if he qualified as a "working proprietor." Where the standard is a "substituted standard" or a "percentage standard," and in "profits standard"

cases so far as the remuneration exceeds that of the same director not deducted in computing the profits of the standard period similar relief is granted, that is to say, a deduction is allowed not exceeding the amount by which the standard would be increased if the director were, in law, a " working proprietor " and " working proprietor standard " were taken in lieu of the " substituted standard," " percentage standard " or " profits standard."

(iii) A director who qualifies as a whole-time service director for *part* only of an accounting period and does not rank as a " working proprietor," as respects that part of the period.

(iv) In cases where the " minimum standard " or " working proprietor standard " is applicable, a full-time director (not qualifying as a " working proprietor ") who satisfies for part only of the chargeable accounting period the condition of not owning or controlling more than 5 per cent. of the ordinary share capital : but the deduction in respect of remuneration for the part of the period during which that condition is not satisfied is subject to the restrictions—

(*a*) that it is not to exceed the proportionate part of the amount by which the standard would be increased if the director were regarded as a " working proprietor," and

(*b*) that together with the remuneration allowed for the rest of the period it is not to exceed the amount by which the standard for the chargeable accounting period would be increased if the director were regarded as a " working proprietor."

11. DEDUCTIONS : TREATMENT OF SUMS RECEIVED BY DIRECTORS FOR SERVICES IN TRADE OR PROFESSIONAL CAPACITY.

The expression " directors' remuneration " in Rule 10, Part I, Seventh Schedule, Finance (No. 2) Act, 1939, is interpreted as meaning the whole of any remuneration payable to the directors by way of salary, fees, bonus or commission, including any remuneration for services to the company which are of a secretarial, managerial, advisory or technical nature. Exceptions are, however, made in the following circumstances :

(i) Where a director carries on a trade or profession on his own account, the expression " directors' remuneration " is not regarded as including any receipts for services rendered to the company in his trade or professional capacity (e.g., as stockbroker, accountant, solicitor, etc.) which are included in the computation of his profits under Case I or Case II of Schedule D.

(ii) Where a director is a member of a recognised professional body and is separately remunerated as an employee for services rendered to the company in his professional capacity, the remuneration as employee is not regarded as " directors' remuneration ", if it is reasonable in amount and the professional services are not of such a nature as to be directly connected with the particular trade or business carried on by the company. Where the director is a " working proprietor " this course is, however, followed only if the time devoted to the company's business in a non-professional capacity is in itself sufficient to satisfy the " working proprietor " conditions.

12. DEDUCTIONS : WAGES OF SKIPPER AND CREW OF TRAWLER.

The customary wages payable to a skipper, or a member of the crew, of a trawler may be allowed as a deduction in computing the profits of the undertaking notwithstanding that the individual concerned may have a proprietary interest in the vessel, but, if he qualifies as a " working proprietor," he will not then be treated as such for the purposes of the " minimum standard."

13. DEDUCTIONS : EXPENDITURE ON MAINTENANCE OF PROPERTY.

Expenditure on " maintenance " within the meaning of Rule 8 (2), No. V, Schedule A, Income Tax Act, 1918, by virtue of Section 25, Finance Act, 1924, is allowed as a deduction in computing the profits of property-owning concerns.

14. DEDUCTIONS : MINERAL RIGHTS DUTY AND ROYALTIES WELFARE LEVY.

Mineral Rights Duty and Royalties Welfare Levy are allowed as deductions in computing profits.

15. COMPUTATION OF CAPITAL : DEBIT BALANCE OF CAPITAL.

The proviso to Section 13 (3), Finance (No. 2) Act, 1939, provides for an addition to be made to the standard profits of a business where the average amount of the capital employed in the business in a chargeable accounting period exceeds the average amount employed in the standard period.

Where a business has been carried on in the standard period with a debit balance on capital account as computed for Excess Profits Tax purposes, and in a chargeable accounting period the debit balance has been decreased or eliminated the decrease of the debit balance is treated as an increase of capital for the purposes of the proviso to Section 13 (3).

16. COMPUTATION OF CAPITAL : ADVANCE PAYMENT OF TAX.

Rule 2 (1), Part II, Seventh Schedule, Finance (No. 2) Act, 1939, requires debts to be deducted in computing capital and provides that *debts* for Income Tax, National Defence Contribution and Excess Profits Tax shall be deemed to have become due on certain specified dates.

The payment of tax before those dates is a withdrawal of capital on the date of actual payment, but where Income Tax, National Defence Contribution or Excess Profits Tax is paid in advance during a period of twelve months before the date on which it would be deemed to have become due under Rule 2 (1) the payment is not treated as a withdrawal of capital until the deemed due date.

17. COMPUTATION OF CAPITAL : U.S.A. TREASURY SAVINGS NOTES.

Investments held by an ordinary trading concern are required by Rule 3, Part II, Seventh Schedule, Finance (No. 2) Act, 1939, to be left out of account in computing capital. Where, however, a trading concern chargeable to Excess Profits Tax purchases U.S.A. Treasury Savings Notes and uses them for payment of U.S.A. taxes the Notes are treated as capital employed in the trade or business as from a date twelve months in advance of the date on which those taxes are deducted in computing capital for Excess Profits Tax purposes.

18. COMPUTATION OF CAPITAL : EFFECT OF " SPREADING " OF OBSOLESCENCE ALLOWANCE.

Where a wear and tear allowance is given in respect of plant, the value of the plant to be included in the computation of the capital employed in the business is its original cost reduced by the aggregate of the wear and tear allowances made. When plant is sold or scrapped the capital employed in a business is reduced to the extent of the loss incurred on the sale or scrapping, the loss being measured by the difference between the value of the plant for Excess Profits Tax purposes and any sum realised by its sale. This is also the measure of the obsolescence allowance given as a deduction in computing profits if the plant is replaced.

Where an allowance for obsolescence in any particular accounting period is not regarded as representing a sum reasonably and properly attributable to that period and is spread back to previous accounting periods under the provisions of Section 33 (2), Finance Act, 1940, the

amount attributed to each accounting period is, if the taxpayer desires, deducted from the value of the plant, in computing capital, on the same cumulative basis as is adopted in connection with wear and tear allowances, instead of being deducted from the value of the plant in one sum when the plant is sold or scrapped. This basis of computing capital is subject to the following conditions:

(*a*) it is to be applied to each allowance for obsolescence which has already been, or which may in future be, spread under Section 33 (2);

(*b*) as regards a group of companies it is to be applied consistently to all such allowances throughout the group.

19. COMPUTATION OF CAPITAL: ACCEPTANCE CREDITS: BILLS DRAWN BY TRADE CREDITORS.

Financial accommodation obtained by a trader from the discounting of bills drawn *by him* upon, and accepted at his request by, an accepting house constitutes borrowed money.

Where, in the case of a trader, a bill is drawn *by a trade creditor* upon, and accepted on the trader's behalf by, an accepting house, the net amount of credit obtained by the trader through the acceptance is, at the option of the trader, treated as borrowed money in computing his capital for Excess Profits Tax purposes, subject to the commission payable to the accepting house for its service in accepting the bill and the notional discount applicable to the period after acceptance being treated as interest or other consideration for the use of borrowed money. A trader adopting this basis is required to adopt it consistently in relation to all chargeable accounting periods as from April 1, 1940.

20. COMPUTATION OF CAPITAL: VALUATION IN STANDARD PERIOD OF ASSETS WHICH HAVE SINCE CEASED TO BE EMPLOYED.

Under Rule 1, Part II, Seventh Schedule, Finance (No. 2) Act, 1939, an asset acquired by purchase and employed in a trade or business is to be included in the computation of capital at the price at which it was acquired, subject to certain deductions including such deductions for wear and tear or depreciation as are authorised by the Income Tax Acts or by Part I of that Schedule. Consequently, where since the commencement of the standard period such an asset has ceased to be employed in the trade or business, the resultant decrease in capital is computed by reference to the original cost of the asset less the authorised deductions. In the case, however, of assets such as freehold and leasehold properties, patents and mineral leases, the computation of the decrease in capital is in appropriate cases allowed to be made by reference to the value of the asset at the commencement of the standard period.

21. COMPUTATION OF CAPITAL: LOANS BY SHAREHOLDERS TO PRIVATE COMPANY.

In relation to chargeable accounting periods ended on or before March 31, 1940, and, in the case of businesses to which the provisions of Section 29, Finance Act, 1941, do not apply, in relation to subsequent chargeable accounting periods, borrowed money is required to be deducted in computing capital. Advances, with or without interest, made by shareholders to a private company to provide working capital are, however, admitted as capital employed (any interest paid being consequently added back in computing profits), provided that the amount so advanced by any one person is in approximately the same proportion to the total of such advances as his holding of ordinary shares is to the total ordinary share capital.

22. GROUPS OF COMPANIES: ONE GROUP ACQUIRING CONTROL OF ANOTHER GROUP.

Part II, Fifth Schedule, Finance Act, 1940, requires a group standard to be computed for all the members of a group other than "new subsidiaries," and the group standard so computed is apportioned to those members under Part III of the Schedule. Part III permits a "new subsidiary" to choose its own standard, other than a "minimum standard" or "working proprietor standard." Under the proviso to Rule 13 (1) of Part IV of the Fifth Schedule, a subsidiary member of a group which, in the standard period of that group, was a member of some other group is not to be deemed a "new subsidiary" of the first group unless the Commissioners of Inland Revenue are satisfied that there is no substantial degree of connection or continuity between the two groups.

Where, however, after the end of its standard period, a group of companies acquires control of the whole of another group and each company in the acquired group passes the test of being 90 per cent. owned, directly or indirectly, by the new principal company, the acquired group is allowed to retain the group standard which it had obtained under Part II of the Fifth Schedule. Thus, in effect, the acquired group is, as a single unit, given "new subsidiary" treatment.

23. GROUPS OF COMPANIES: FOREIGN INVESTMENT SUBSIDIARIES.

A *non-resident* subsidiary of a principal company resident in the United Kingdom is a member of a group for the purposes of the Fifth Schedule, Finance Act, 1940, but is not a "controlled body corporate" for the purposes of Section 29 of that Act. Where Section 29 applies to a Fifth Schedule trading group the income of a non-resident investment-holding subsidiary from its investments is, therefore, not excluded from the charge to Excess Profits Tax by that Section. In such a case the Excess Profits Tax liability is, if the taxpayer desires, computed on the basis of that subsidiary being regarded as a "controlled body corporate" within the meaning of the Section, subject to this basis being adopted consistently in regard to that subsidiary and any other such subsidiaries within the group.

24. DEFICIENCIES.

Section 15, Finance (No. 2) Act, 1939, provides for a deficiency occurring in a trade or business in one chargeable accounting period to be set against an excess occurring in the same business in another chargeable accounting period.

While the set-off is thus confined to deficiencies and excesses of the same business a set-off is, in practice, allowed in the following cases:—

(i) Partner in one business who is a partner in, or proprietor of, another.

Where a person is a partner in two different partnerships his share of a deficiency incurred in one business is treated as available to be set against his share of any excess in the other, in so far as (*a*) it is not a deficiency below a minimum standard and (*b*) it cannot be set off against excess profits of the business in which it was incurred.

It is a condition of this treatment that it is agreed by all the persons concerned that the deficiency so set off is not to be regarded as available for carry forward and set off against any subsequent excesses in the business in which it was incurred.

Similar treatment is given where a person is a partner in one business and the proprietor of another.

(ii) Changes in persons carrying on a business.

If a change occurs in a partnership, the business carried on by the newly constituted partnership is technically a different business from that previously carried on. Where, however, a member of the old partnership continues as a member of the new partnership, his share of a net deficiency over all chargeable accounting periods

prior to the change is set off against his share of a net excess over all chargeable accounting periods subsequent to the change, and *vice versa*.

Similar treatment is allowed where a business previously carried on by an individual or a partnership has been transferred to a private limited company, the ordinary share capital of which has, wholly or mainly, been allotted to the former proprietor or proprietors as consideration for the transfer of the business and retained in their beneficial ownership, unless by reason of the capital structure of the company it would not be equitable to allow such treatment.

In these cases it may be necessary from time to time to recompute the relief to ensure that unexhausted deficiencies appropriate to continuing partners, etc., are set only against unrelieved excess profits appropriate to those persons, and to correlate the relief with the statutory relief for deficiencies which is allowable to the trade or business as a whole. Before the relief is given all persons concerned are required to give their consent to any necessary adjustments being made.

Where—

(*a*) the proprietor of, or a partner in, a business makes a voluntary disposition *inter vivos* of his interest, or part of his interest, in the business to a direct relative; or

(*b*) the interest, or part of the interest of the proprietor of, or a partner in, a business passes under his will or on his intestacy to a direct relative as beneficiary (including a life tenant),

the transfer to the direct relative is, where desired by the taxpayer, treated for the purpose of deficiency relief as not constituting a change of ownership. (In this connection the expression " direct relative " means spouse, ancestor, or lineal descendant.)

25. Successions and amalgamations: trade or business disposed of between January 1, 1935, and April 1, 1939.

Where a trade or business was wholly or mainly transferred by one person to another between January 1, 1935, and April 1, 1939, the latter can claim under Section 16 (6), Finance (No. 2) Act, 1939, to be treated, for the purpose of computing his standard profits, as having carried on the transferred trade or business or part of a trade or business from the date of its commencement provided that the Commissioners of Inland Revenue are satisfied that the trade or business carried on after the transference was not substantially different from the trade or business or part transferred.

Where between those dates a trade or business was divided into two or more parts, and the owner disposed of the parts to different persons, or a trade or business was amalgamated with another trade or business so as to lose its identity, claims under Section 16 (6) are admitted, provided that there was no substantial change in the nature of the business carried on.

26. Deferred repairs and renewals.

Where repairs and renewals which have fallen due to be carried out cannot be carried out owing to the exigencies of the war, and are therefore being deferred until the end of the war, it is the practice to hold a part of the charge in suspense, in order to give immediate relief as though the repairs and renewals had actually been carried out during the war. When, after the end of the war, the deferred repairs and renewals are in fact carried out, the tax held in suspense, after making any necessary adjustments by reference to the expenditure actually incurred, will be discharged.

27. Recovery by employers.

Where, in computing the profits of a trade or business for periods after March 31, 1941, any payment for services has been disallowed under Section 32, Finance Act, 1940, as being in excess of the amount considered to be reasonable and necessary, Section 34, Finance Act, 1941, empowers the person carrying on the trade or business to recover from the recipient any additional tax borne as a consequence of that disallowance, and provides for an appropriate reduction of the Income Tax liability of the person from whom the amount was recovered and of the amount of the Excess Profits Tax to be treated as paid by the person carrying on the trade or business.

Where, for periods prior to April 1, 1941, a director or employee is prepared to refund voluntarily to the employer any additional tax payable by the employer as a result of a disallowance under Section 32, Finance Act, 1940, adjustments corresponding to those under Section 34, Finance Act, 1941, are made in computing the Income Tax liability of the director or employee, provided that the employer agrees to treat the amount refunded as a sum recovered under Section 34.

Other cases where remuneration is disallowed as a deduction in computing the Excess Profits Tax profits of a trade or business and the recipient waives or refunds the whole or any part of the disallowed remuneration are treated similarly, the recipient's Income Tax liability being appropriately adjusted provided that the payer of the remuneration agrees to corresponding restriction of the deductions on account of the remuneration allowed in computing the profits of the trade or business for Income Tax, Schedule D, and National Defence Contribution.

28. Special area concerns.

Under the provisions of Section 19 (7), Finance Act, 1937, National Defence Contribution chargeable in respect of the profits of industrial undertakings established in the special areas may in certain circumstances be remitted.

Where in any such case Excess Profits Tax and not National Defence Contribution is chargeable there is remitted Excess Profits Tax equal to the National Defence Contribution that would have been chargeable and remitted if there had been no Excess Profits Tax.

29. Director-control: body corporate as director.

Under the provisions of Section 40, Finance Act, 1941, a body corporate can be regarded as a director of a company in considering whether there is director-control for Excess Profits Tax purposes only if the body corporate is a company (defined for Excess Profits Tax as a company within the meaning of the Companies Act, 1929, or the Companies Act (Northern Ireland) 1932), and is itself director-controlled. A foreign company is not treated as debarred from ranking as a director in this connection by reason of the fact that it does not satisfy the definition of " company ".

30. Relation of Excess Profits Tax to National Defence Contribution: National Defence Contribution chargeable on principal company in respect of profits of company which is a subsidiary for National Defence Contribution, but not for Excess Profits Tax purposes.

Where as a result of a requirement under Section 22, Finance Act, 1937, National Defence Contribution is chargeable on a principal company in respect of profits of a company which is a subsidiary for National Defence Contribution, but not for Excess Profits Tax, the National Defence Contribution chargeable on the principal company is allowed to be apportioned between the companies concerned for the purpose of comparing total National Defence Contribution and total Excess Profits Tax in accordance with the provisions of Section 19, Finance (No. 2) Act, 1939.

LAW

Legal Notes

COMPANY LAW

Trade names—Passing off—Fraud expressly negatived.

In *Office Cleaning Services, Ltd.* v. *Westminster Office Cleaning Association* (1944, 2 All E.R. 269), the Court of Appeal, reversing a decision of Morton, J., dismissed the plaintiffs' claim for an injunction to restrain the defendants from using in connection with their business as contractors for the cleaning of offices, the trading style "Office Cleaning Association," or any other style so closely resembling the name of the plaintiffs as to be calculated to lead to the defendants' business being confused by members of the public with that of the plaintiffs. The defendants denied that the trading style complained of was capable of confusion, and contended that the words "Office Cleaning" were merely descriptive, and, when read in conjunction with the word "Association" were sufficient to distinguish their title from the plaintiffs' title "Office Cleaning Services, Ltd." They also denied any intention to deceive by the omission of the word "Westminster" from their trading style. It was found as a fact that there was no fraud. The Court of Appeal held that, in the absence of fraudulent intention, the differentiation between the words "Services" and "Association" sufficiently distinguished the defendants' business from that of the plaintiffs.

The plaintiffs' case was not based on the Companies Act, 1929, Section 17, which prohibits the registration of a company by a name identical with the registered name of an existing company, or so nearly resembling it as to be calculated to deceive. It was brought at common law on the ground of "passing off." The foundation of such an action is that no one is entitled to represent his business or goods as being the business or goods of another, by whatever means that result may be achieved. It is immaterial whether the representation be intentional or not. But a distinction must be drawn between cases in which the trade name or the part of it in question consists of a word or words in ordinary use descriptive of the business carried on or the article dealt in, and cases in which the word or words complained of are of the character of fancy words and primarily have no relation to such business or article, but only to the person carrying on the business or dealing in the article. If it can be established that the descriptive words have acquired, among that class of the public likely to deal with the business or goods in question, a subsidiary meaning denoting the business or origin of the article, relief can be sought restraining the use of these words. But the burden of such proof is difficult to discharge. In this case it was admitted the words "Office Cleaning" had not acquired a secondary meaning confining their user to the plaintiffs. The defendants had dropped the use of the word "Westminster" because it was carried on in London generally. In the absence of fraudulent intention, the decided cases establish that a small differentiation is sufficient to defeat a plaintiff's claim. In this case, the plaintiffs had used the distinctive word "Services" in their title. The defendants used "Association," which bore no resemblance to "Services." The Court of Appeal held, therefore, that the difference sufficed to distinguish the defendants' business from that of the plaintiffs.

EXECUTORSHIP LAW AND TRUSTS

Charitable purpose—Education of restricted class.

In *Re Compton* (1944, 2 All E.R. 255), Cohen, J., held that a trust of an educational nature, though for a very limited class, was good. The class contained only 28 members, confined to three families, one of which was not related to the testatrix. He said the case was an excellent example of the troubles arising when people try to write their own wills. A lady with an estate of approximately £160,000 had chosen to do so, and had made it in many places hardly intelligible and in such a form that, if he came to one conclusion, he was bound to defeat her intentions. It was made in 1906. Most of her property was to be held on trust "for the education of Compton and Powell and Montagu children, but Compton and Powell children are to have the preference as scholarships for the time being thought best by the trustees to be held not over the age of 26 years. It is not to be used for a pension or income for any one, and is to be held as scholarships at the pleasure of the trustees. It is to be used to fit the children as servants of God serving the nation, not as students for research of any kind." The children were then defined. The testatrix died in 1941. There were 28 descendants of the three stocks, namely, 10 Compton children, 6 Powell children, and 12 Montagu children. Each of the three sections had a boy and a girl who would be eligible if there was a valid charitable trust. On behalf of the next of kin, it was argued that the trust was void because in all charitable trusts there must be a public element, whereas there was no such element here. The trustees were not an educational establishment, and the dominant motive was not to promote education as such, but only the education of a limited class. Cohen, J., said that had the matter been entirely free from authority, he would have been inclined to uphold that argument, and find the trust void. But he felt bound by authority to find that in all the circumstances the clause was sufficiently wide to constitute a valid educational trust.

Charitable Trusts—Education—Chess.

In *Re Dupree Trusts* (reported in *The Times* Newspaper, October 26, 1944), Vaisey, J., decided that the encouragement of chess among boys and young men in Portsmouth was educational and so constituted a good, charitable purpose. In 1932 Sir W. T. Dupree settled a block of shares on trusts providing that the income should be applied in promoting a chess tournament annually in Portsmouth for boys up to the age of 21. There were to be cash prizes, including a first prize of £100, to be applied as the trustees should consider best for the advancement of the winners. Vaisey, J., observed that an enthusiastic chess player might attribute his success in life to the education he had received in learning knight's moves and so on. On the other hand, some people might regard time spent on chess as wasted. They might say it encouraged tortuosity of thought, which was entirely undesirable, and that it was more of a torment than a game. He said it was a highly intellectual game and encouraged concentration, ingenuity, foresight, and probably patience. He was not referring to those awful chess matches in which moves were transmitted by cable during the course of years. The game also encouraged interesting international relations. There might be a pleasant discussion hereafter as to whether a gift for solving cross-word puzzles was charitable or not. Prowess in that direction might indicate mental power or a species of low mind. Chess stood high in the list of intellectual games. Those who played it regarded it as the king of games. But, in directing a scheme for the future administration of the trusts, he was not laying down any general principle. There was a rather slippery slope. It might be said, if chess, why not draughts, bezique, bridge, whist, or even collecting stamps or birds' eggs? If and when such pursuits arose for consideration, they would have to be decided.

Society of Incorporated Accountants

COUNCIL MEETING

A meeting of the Council was held on Thursday, November 23, 1944, when there were present: Mr. Richard A. Witty, President (in the chair), Mr. Fred Woolley, Vice-President, Mr. F. J. Alban, Mr. A. Stuart Allen, Mr. R. Wilson Bartlett, J.P., Mr. Robert Bell, Mr. R. M. Branson, Mr. J. Paterson Brodie, Mr. E. Cassleton Elliott, Mr. M. J. Faulks, Mr. C. A. G. Hewson, Mr. Walter Holman, Mr. Edmund Lund, Mr. Bertram Nelson, Mr. T. Harold Platts, Mr. F. A. Prior, Mr. R. E. Starkie, Mr. Joseph Stephenson, Mr. Percy Toothill, Mr. Joseph Turner, Mr. A. H. Walkey, Mr. A. A. Garrett (Secretary), and Brigadier O. H. Tidbury (Assistant Secretary).

The Late Mr. Henry Morgan

The Council paid a tribute to the memory of Mr. Henry Morgan, and adopted in silence a resolution, the terms of which are given on page 41 of this issue.

Messages of sympathy were received from Mr. C. Hewetson Nelson, Senior Past President, who was unable to be present, The Institute of Chartered Accountants, The Association of Certified and Corporate Accountants, The London Chamber of Commerce, and District Societies of Incorporated Accountants.

Personal

The President expressed the pleasure of the Council to:

Mr. Fred Woolley, Vice-President, upon the Resolution of the Mayor and Corporation of Southampton to confer upon him the Freedom of the County Borough of Southampton in recognition of his public services.

Mr. T. Harold Platts upon his re-election as Mayor of Droitwich for a second year.

Mr. Bertram Nelson upon his appointment as a Justice of the Peace for the City of Liverpool.

Lady Keens upon her election as Mayor of Luton.

Brigadier O. H. Tidbury, M.C., upon taking up his appointment as Assistant Secretary to the Society.

Mr. Edmund Lund, M.B.E.

Mr. Edmund Lund intimated that he had recently retired from the office of City Treasurer of Carlisle, and in consequence tendered his resignation as a member of the Council of the Society.

The Council accepted Mr. Lund's resignation with much regret, and recorded the thanks of the Society for his valuable services as a member of the Council and to the Cumberland and Westmorland District Society.

Incorporated Accountants' Hall

The Council received a report from the Society's Surveyor, Mr. G. F. H. Waghorn, Chartered Surveyor, and a report of progress with first aid repairs. The general proposals of the Finance and General Purposes Committee for effecting eventual restoration of the present building were approved.

"Design of Accounts"

It was reported that the first edition had been completely disposed of. The Research Committee were preparing a second edition.

Post-War Courses for Members Now Serving with H.M. Forces

The Council approved proposals recommended by the Examination and Membership Committee, to which reference is made in Professional Notes.

Contributions to War Charities

It was resolved to contribute from the Society's Funds for the year 1944:

Three hundred guineas to the Joint War Organisation of the British Red Cross Society and the Order of St. John.

One hundred guineas to the Y.M.C.A. War Fund.

The members of the Society would be asked at the next Annual General Meeting to confirm the payment of the contributions.

SPECIAL COUNCIL MEETING

Report from the Disciplinary Committee

A special meeting of the Council was held on November 23, 1944, when there were present Mr. Richard A. Witty, President, in the chair, Mr. Fred Woolley, Vice-President, Mr. R. Wilson Bartlett, Vice-Chairman of the Disciplinary Committee, and other members of the Council, Mr. A. A. Garrett, Secretary, and Brigadier O. H. Tidbury, Assistant Secretary.

Herbert James Dodds, Birmingham

The Council received a report from the Disciplinary Committee that Herbert James Dodds, Associate, had at the Birmingham Assizes been convicted following his own confession that he being a trustee of certain property had converted sums of money to his own use and benefit. The Council resolved that in accordance with the report of the Disciplinary Committee, Herbert James Dodds, Associate, Birmingham, be and is hereby excluded from membership of the Society, in accordance with Articles 33, 34, and 35.

SCOTTISH BRANCH

A meeting of the Council of the Scottish Institute of Accountants, the Scottish Branch of the Society, was held in Glasgow, on October 27. Mr. Robert T. Dunlop presided over a good attendance of members. The death of Mr. W. L. Pattullo, who recently resigned from the Council, was reported, and the Council expressed their sincere regret at the loss to the Scottish Branch by the death of this old and influential member.

A number of applications to sit the Society's examinations were reported by the Secretary, and other subjects of interest to the profession were considered. Mr. John Steel Gavin, F.S.A.A., Glasgow, was co-opted to fill the vacancy caused by the resignation of Mr. Pattullo.

BIRMINGHAM DISTRICT SOCIETY

Two lectures are being delivered by Mr. A. E. Shenfield, Lecturer in Economics, Birmingham University, on "Social Security" on November 23 and on "Bretton Woods Monetary System" on December 7. The meetings will be held at the Law Library, 8, Temple Street, Birmingham, at 6 p.m.

PERSONAL NOTES

Mr. R. Wilson Bartlett, J.P., is among those nominated as Sheriff for the County of Monmouthshire.

Mr. A. L. Chapman announces that he has taken Mr. J. T. Paxton into partnership. The practice will be continued as Hewitt, Chapman & Co., Incorporated Accountants, at Phœnix Chambers, Colmore Row, Birmingham.

Mr. J. R. Davison, Incorporated Accountant, announces that he has taken over the practice of the late Mr. T. R. Ineson, Incorporated Accountant, Huddersfield. The practice is now being conducted from The Mount, Heckmondwike.

Mr. G. G. Thomas, Incorporated Accountant, has commenced public practice in partnership with Major H. W. S. Seward. The practice is being carried on under the style of G. Lloyd Thomas & Co., at 11, Nevill Street, Abergavenny, and as Thomas, Seward & Co., at Cardiff and Swansea.

REMOVAL

Messrs. J. A. Cook & Co., Incorporated Accountants, announce a change of address to 110, Cannon Street, London, E.C.4.

SCOTTISH NOTES

MR. J. D. C. MACKAY

The death took place on November 6, at his residence in Glasgow, of Mr. John D. C. MacKay, who, with the late Mr. Robert T. McCutcheon, F.S.A.A., founded the School of Accountancy, a tutorial institution well known to candidates intending to enter the accountancy profession. Mr. MacKay was 58 years of age.